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## COUNCIL OF STATES

The following report of the Joint Committee of the Houses on the Bill to provide a special form of marriage in certain cases, and for the registration of such and certain other marriages was presented to the Council of States on the 18th March 1954:—

### COMPOSITION OF THE JOINT COMMITTEE

1. Shri C. C. Biswas—*Chairman*,
2. Dr. Shrimati Seeta Parmanand,
3. Shrimati Savitry Devi Nigam,
4. Shrimati Violet Alva,
5. Khwaja Inait Ullah,
6. Shri Mohamed Valiulla,
7. Dr. Purna Chandra Mitra,
8. Shri Ram Prasad Tamta,
9. Shri B. K. Mukerjee,
10. Shri K. Rama Rao,
11. Shri Hriday Nath Kunzru,
12. Principal Devaprasad Ghosh,
13. Shri Venkat Krishna Dhage,
14. Shri Rajendra Pratap Sinha,
15. Shri Amolakh Chand,
16. Shri Hari Vinayak Pataskar,
17. Shrimati Indira A. Maydeo,

18. Shri Narhar Vishnu Gadgil,
19. Pandit Balkrishna Sharma,
20. Shri Nardeo Snatak,
21. Shri Ram Saran,
22. Shri Muhammed Khuda Bukhsh,
23. Shrimati Sushama Sen,
24. Shri Awadheshwar Prasad Sinha,
25. Dr. Hari Mohan,
26. Shri Dodda Thimmaiah,
27. Shri G. R. Damodaran,
28. Shri C. P. Mathew,
29. Shri T. N. Viswanatha Reddy,
30. Shri Tek Chand,
31. Shrimati Subhadra Joshi,
32. Shrimati B. Khongmen,
33. Shri B. N. Misra,
34. Shri N. Somana,
35. Shri Purnendu Sekhar Naskar,
36. Shri B. Pocker,
37. Her Highness Rajmata Kamlendu Mati Shah,
38. Shrimati Sucheta Kripalani,
39. Shrimati Renu Chakravartty,
40. Dr. A. Krishnaswami,
41. Shri M. R. Krishna,
42. Shri B. Ramachandra Reddi,
43. Shri P. N. Rajabhoj,
44. Shri K. A. Damodara Menon,
45. Shri Tridib Kumar Chaudhuri.

#### REPORT OF THE JOINT COMMITTEE

The Joint Committee to which the Bill\* to provide a special form of marriage in certain cases and for the registration of such and certain other marriages was referred have considered the Bill and the opinions elicited thereon, and I now submit this their Report, with the Bill as amended by the Committee, annexed hereto.

\*The Bill was published in the Gazette of India Extraordinary, Part II, Section 2, dated the 28th July 1952.

The Joint Committee was appointed on a motion adopted by the Council of States on the 16th September 1953, with which the House of the People concurred on the 17th December 1953.

Upon the changes proposed in the Bill which are not formal or consequential, the Joint Committee note as follows:—

*Clause 1.*—This law should also apply to persons permanently residing in any part of India outside the State of Jammu and Kashmir who may, for the time being, be in that State in the same manner as it applies to such persons outside India. Clause 1 has been amended accordingly.

*Clause 2.*—A definition of 'district court' has been inserted in view of the new provisions included in the Bill with respect to divorce.

In the opinion of the Joint Committee, it would be better to specify in a schedule the persons whom a man or a woman cannot marry than to define degrees of prohibited relationship in an abstract manner; and this is what has now been done.

In sub-clause (2), the persons entitled to give their consent to a marriage under this law, wherever such consent is necessary, are defined as being the father and after the father the mother, except in the rare case where there is a court guardian who happens to be a person other than the father or mother, in which case the guardian appointed by the court alone will be entitled to give such consent.

*Clause 5.*—In the opinion of the Joint Committee, residence for fourteen days within the jurisdiction of a Marriage Officer should be sufficient to give him jurisdiction to register a marriage, and this clause has been amended accordingly.

*Clause 6.*—In cases where a marriage is sought to be solemnized before a Marriage Officer other than the Marriage Officer within whose jurisdiction the parties are permanently residing, it is essential that due notice should be given in the place of permanent residence also, and sub-clause (2) makes provision in this behalf.

*Clauses 8, 9 and 10 (old clause 8).*—The Joint Committee feel that it would not be in the interests of the parties to an intended marriage or in the public interest that courts should be invested with jurisdiction in the matter of objections to any such marriage. Such objections should ordinarily be disposed of by the Marriage Officers themselves within a specified period, the parties being given a right of appeal if aggrieved by the decision of the Marriage Officer. The Marriage Officer should also have the usual powers for holding inquiries with respect to such matters. Clause 8 of the original Bill has, therefore, been completely redrafted.

*Clause 11 (old clause 10).*—It is possible that in certain cases it may not be practicable for the guardian to appear before the Marriage Officer to sign the declaration and the proviso makes suitable provision in this behalf.

*Clause 12 (old clause 11).*—The Joint Committee have now made it clear that the formula for marriage may be uttered in any language understood by the parties.

*Clause 13 (old clause 12).*—The words “but nothing contained in this sub-section shall apply to render a marriage valid which would otherwise have been invalid” have been omitted by the Joint Committee as being unnecessary.

*Clause 14 (old clause 13).*—This clause has been redrafted in the light of the new clauses 8, 9 and 10.

*Clause 15 (old clause 14).*—In the opinion of the Joint Committee, the scope of this clause should be widened so as to include within it marriages which, although hit by the rule of prohibited degrees as defined in the Bill, are valid under the personal law applicable to the parties. This clause has been amended accordingly.

*Clause 18 (old clause 17).*—A provision has been added whereby children born of parents whose marriage had been celebrated in some other form shall be regarded as always having been legitimate once their marriage is registered under this law.

*Clause 19 (old clause 18).*—The Joint Committee gave very anxious consideration to this clause as this had been made the subject of attack in many of the opinions received on the ground that it penalises marriages under this law. After careful consideration the Joint Committee have decided to retain this clause in its original form, particularly because it has the desirable effect of simplifying the law of succession. Were the clause to be omitted, the share in the joint-family property of a person marrying under this law will necessarily have to devolve on the survivors, which would mean that the daughters will be left out of account. Moreover, one of the chief reasons why persons marry under this law is that in case of intestate succession, the Succession Act will apply and it would be extremely inconvenient to have different laws of succession applicable to different types of property. Severance from the joint-family does not, of course, prevent the parties from reuniting if they so desire.

*Clause 20 (old clause 19).*—The proviso has been omitted because in the opinion of the Joint Committee the right to any religious office or service or to the management of any religious or charitable trust may easily be left to be regulated by the law relating thereto.

Old clauses 20, 21 and 22 have now been omitted. Clause 20 has been omitted as unnecessary and out of place. The law of adoption should be left to regulate any such matter. Similarly clause 21, which in the opinion of the Joint Committee is even more objectionable than clause 20, has also been omitted. Clause 22 has been omitted in view of the self-contained provisions for divorce now included in the Bill.

*Clause 21 (old clause 23).*—The amendment is to make it clear that the Succession Act is to apply notwithstanding any provision to the contrary contained in that Act with respect to its application to Hindus, Sikhs, Jains and Parsis.

*Clauses 22 to 28.*—Chapters V, VI and VII replace clause 22 of the original Bill. Clauses 22, 23, 24, 25 and 26 deal with restitution of conjugal rights, judicial separation, void marriages, voidable marriages and divorce, and in the drafting of these clauses the provisions contained in the Indian Divorce Act, 1869, the Hindu

Marriage and Divorce Bill, the Dissolution of Muslim Marriages Act, 1939, the Parsi Marriage and Divorce Act, 1936, and the Matrimonial Causes Act, 1950, of the United Kingdom have been taken into account. Marriages have been classified as void and voidable in the usual manner, but care has been taken to ensure that, consistently with the principles underlying void marriages, children of any marriage are not made illegitimate except in the very few cases where it is necessary so to do.

In clause 27, a provision has been included restricting petitions for divorce during the first three years after marriage as, in the opinion of the Joint Committee, the parties should be given a full opportunity to make the marriage a success.

*Clauses 29 to 39.*—These clauses deal with jurisdiction and procedure. In clause 29 several alternatives are provided for vesting jurisdiction in Indian courts so as to cover all possible cases which may arise.

*Clause 44 (old clause 28).*—The Joint Committee have reduced the punishment to one of simple imprisonment for a term which may extend to one year, or fine which may extend to five hundred rupees, or with both.

*Clause 49 (old clause 33).*—This clause has been redrafted so as to make it clear that marriages registered under the Special Marriage Act, 1872, shall be deemed to have been registered under this law.

*The First Schedule.*—This is new and sets out in a convenient form the prohibited relations for purposes of marriage.

*The Second Schedule (old First Schedule).*—A new column has been inserted in which the permanent dwelling place of the parties will have to be set out if their present dwelling place is not their permanent place of residence.

The Joint Committee recommend that the Bill as now amended be passed.

C. C. BISWAS,

*Chairman of the Joint Committee.*

NEW DELHI;

The 16th March 1954.

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## MINUTES OF DISSENT

### I

I have to submit the following Note of Dissent, in respect of the Special Marriage Bill.

So far as the principle of monogamy in the Bill is concerned, I welcome it and have nothing to say against it.

I am not in favour of treating marriage as a contract, nor do I feel that intercaste marriages will be a success. I disagree with the recommendations of the Joint Committee for the following reasons:—

1. The Bill is contrary to Hindu Law and against the Islamic, Jewish and Parsi religions and the laws of marriage of these communities. It is not feasible to establish a uniform code governing all the different communities who have their personal laws.
2. This Bill will not help to make the marriage an enduring union so essential to the peace and welfare of society. Though divorces may in some cases be a solution to help unhappy couples interests of women and children will not be safeguarded. An increase in divorces is surely no credit to any country and this Bill will encourage it. This will disrupt family life and will imperil the future of children who will be deprived of a proper home. The moral rules and the traditional concept of our religion and society should not be lightly disturbed.
3. As is known to all, the Hindu Code Bill provoked widespread opposition and to bring it back again in a different form would not prove helpful. It is definite that this Bill would receive the dissent of the majority of people and to force such a measure on the people will prove detrimental. Legislation without the backing of society and consensus of the people would create unhealthy repercussions and may frustrate the objective in view.
4. No doubt, people are free to marry according to their own religious belief. This Bill will encourage young people in their critical age of adolescence to form unions without the realisation of social implications involved. In the long run they will not find happiness and prosperity by diversion from the social norms and by ignoring or disregarding the wishes of their parents and natural guardians. The Bill may make marital ties insecure and may make divorces easy thus leading to disintegration of society.
5. By marriage among people of different faiths or creed, it would be difficult to create a congenial atmosphere in family or society. The children will suffer the most in view of different faiths and creeds of parents. The divorce provisions would ultimately leave a menace to the harmony of the family and society.
6. By enacting this Bill in its form as recommended, its supporters hope to establish casteless and classless society as well as secularism and Democracy. These objectives can never be realised by tampering with our ancient laws and giving up our deep rooted traditions and customs sanctified by accumulated wisdom and experience of centuries. They are part of the social organism and should not be lightly given up.

The following amendments should be made in the existing law, to suit general demands and to safeguard the interests of the aggrieved party: —

1. As soon as the son becomes a major, his share in the family should automatically go to him. He however, can remain in the family till he or his parents or real guardians want him to do so. This would save him and his bride from trouble in case he had married against his family's wishes, and in case he died, his wife and issues from that marriage would not starve.
2. A girl should be given a share of money or property by the groom at the time of the marriage. Also the dowry that is given by the parents at that time should be considered as her property and should not be allowed to be claimed by the husband and/or his family as is the custom in some parts of the country.
3. As the girl will get her share in the form of dowry from her parents, and a share of money or property from her husband, at her marriage time, she should not claim a share from her brothers after marriage. This would preserve the affection between the brothers and sisters; besides, she has a right of her share in her husband's family.
4. If the husband is a lunatic or an idiot, etc., as is provided in Hindu Law, the wife or a widow should be allowed to remarry if she wants to do so. But in that case the property belonging to her, e.g. the dowry and the gift from her previous husband at the marriage time should go to the issues from her previous husband.

The Bill aims at marriage into a simple contract, completely negating the sacramental nature of marriage and the sanctity and moral side of it. It is going to hit the very root of Hinduism and traditionally age long spiritual characteristics of marriage. In a way the Bill abridges the fundamental rights of freedom of religion.

Marriage in Hindu Law is a sacrament. As Sir Gurudas Banerjee said in his Tagore Law Lectures on 'The Hindu Law of Marriage and Stridhan', "To the Hindus the importance of marriage is heightened by the sanctions of religion". "By no people", says Sir T. Strange, "is greater importance attached to marriage than by the Hindus". In Hindu Law, it is regarded as one of the ten *Sanskars* or sacraments necessary for regeneration of man of the twice born classes, and the only sacrament for women and sudras. It being a settled doctrine of the Hindu religion that one must have a son to save him from a place of torment 'PUT', marriage, as the primary means to that end, becomes a religious necessity!

Regarding clause 19, I endorse and support the recommendations made in the Minute of Dissent presented by Shrimati Sucheta Kripalani and Shrimati Sushama Sen.

K. M. SHAH,  
(Rajmata, Tehri-Garhwal.)

NEW DELHI;  
March 15, 1954.

## II

I wish to record my note of dissent on Chapter IV detailing "Consequences of Marriage under this Act." While the old clauses 20, 21 and 22 have rightly been deleted, the retention of clause 19 (old clause 18) whereby any member of an undivided family marrying under this Act will have deemed to have effected severance from his family, is obnoxious in so far as it seeks to differentiate between those marrying under sacramental form and those marrying under this Act, and in fact seeks to frighten away many who otherwise would have no objection to this form of marriage. As a progressive measure this Act which seeks to enunciate the principle that marriage by registration does not necessarily mean religious ostracisation, is negated by the retention of this clause, and should be deleted.

I also wish to register my dissent on clause 27 restricting petitions for divorce during first three years after marriage. While every attempt should be made to make a success of the marriage, this cannot be done just by refusing to entertain divorce applications within three years of marriage. Some machinery and procedure for reconciliation which tries for mediation and settlement between husband and wife should have been proposed rather than just this restrictive clause which is illogical and may lead to great hardship in spite of the provisions for special cases. I feel that in cases where both parties to the marriage desire to terminate it, they should be granted divorce by mutual consent without having to fulfil the conditions laid down in clause 26, conditions requiring proofs which many sensitive people do not wish to publicly air and discuss.

Clause 26 sub-clause (c), is a dangerous provision. Many political prisoners will fall under this clause, especially under the present Government's policy of suppressing civil liberties. I feel strongly that it be clearly defined that political prisoners will not fall within the purview of this clause.

RENU CHAKRAVARTTY.

NEW DELHI;  
March 15, 1954.

## III

Though I am happy for the improvements made in the draft by the Joint Committee, I feel I shall fail in my duty if I do not express my disagreement in respect of the following three provisions:—

- (a) The permissible age for marriage under this Act in clause 4(c) should be raised to 21 years. Both boys and girls must attain a mature age to select a true and helping partner in life and at the age of 18 most persons are students. Any wrong step in this direction may prove disastrous.

Again, to reduce unemployment and food scarcity abnormal growth of population has to be checked. Early marriage therefore must be discouraged and the age for marriage should be raised from 18 years to 21 years.

- (b) Provision made under this Act in clause 15 for registration of marriages solemnized according to religious

rights, customs and usages will create conflict between law and truth. In sacramental marriages parties have to take oath or to make promises which law should not help anyone to contravene. With a view not to defile the sanctity of truth this provision (clause 15) must be deleted as otherwise this will be ineffective.

- (c) Clause 19 provides for statutory severance of parties to a marriage under this Act from undivided Hindu family. Severance from family will prove to be a severe penalty and will, in most cases, discourage Hindus to take advantage of this law. This provision will, surely, defeat the very purpose of this Act and there is no convincing reason for inclusion of such a penal clause. I have therefore to recommend its deletion.

B. K. MUKERJEE.

NEW DELHI;  
March 16, 1954.

#### IV

In my view in clause 35, sub-clause (3) the words "is not leading a chaste life" should be deleted. Very often husband would bring a false charge in order to avoid the payment of alimony. The wife whose financial condition is very often poor and who is generally diffident to appear in public will find it impossible to refute such a false charge. So she will have to lose even the small amount of money she gets by way of alimony to maintain herself and her children, if any. If launched upon any litigation to defend herself she will have to undergo great financial as well as physical hardships.

Everybody is aware that at present so much orthodoxy prevails in our society that the ideas for chastity of a woman are too high and strict.

The women's chastity is attacked even in trifles. If a woman is even seen talking with a man in the eyes of many simple old people she will not remain chaste.

It is a well known fact that a woman would never think of marrying again if she is given a little money sufficient for pulling on in a very ordinary way.

It is also very well known that an Indian woman has such a great spiritual and cultural heritage that she never even thinks of divorce unless in most precarious conditions. So those who have got some respect for Indian womanhood should press the deletion of the above clause. And the Government should also accept this proposal even at this late hour and delete this clause in order to save the poor women from the exploitation of the cruel husbands.

SAVITRY NIGAM.

NEW DELHI;  
March 16, 1954.

#### V

In clause 15(1)(e) marriages between persons who are within the degrees of prohibited relationship can be registered provided the law or any custom or usage having the force of law governing them

permits marriage between them. Therefore, according to the recommendations of the Joint Committee it is clear that the ban on marriage within the degrees of prohibited relationship should be relaxed when there is a custom or special law to the effect. It is our view that suitable modifications should be made in clause 4. We, therefore, recommend that the following words should be inserted at the end of sub-clause (e) of clause 4:

“unless the law, or any custom or usage having the force of law permits of a marriage between the two.”

We strongly object to clause 19 of the Bill (old clause 18) the retention of which the Joint Committee has recommended. After giving our anxious consideration, we have definitely come to the conclusion that the retention of this clause is objectionable and will to a large extent defeat the object of this legislation. According to the Members of the Joint Committee persons marry under the Special Marriage Act because then the Indian Succession Act apply to them. On the other hand we can definitely say from our experience that people who wanted to marry under the provisions of Special Marriage Act (Act III of 1872) were dissuaded from doing so because of section 22 of that Act. In section 22 of the Special Marriage Act, 1872, following was added by the Amending Act, 1923 (XXX of 1923):

“The marriage under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jain religion shall be deemed to effect his severance from such family.”

Clause 19 of the Bill as recommended by the Joint Committee practically embodies the same provision. What is the object of penalising the members of joint family professing the Hindu Buddhist, Sikh and Jain religions? If one member of such family wants to avail of this special marriage law, it would be unfair to force a separation and to compel the member availing the provisions of this Act to be governed by the Indian Succession Act. This will be really introducing a discrimination which is unconstitutional and illogical.

There are many Hindu Mitakshara coparcenaries or joint families who carry on coparcenary business. If a young man belonging to a Mitakshara joint family wants to marry a Hindu girl under the provision of the Special Marriage Law, immediately the marriage is solemnised and registered under the Act, there shall be a severance *ipso facto* of that member from the joint family. This will have serious effect on the status of the family and will disrupt the joint family business and may bring chaos and ruin. Unless this clause is removed, an impediment or disadvantage would be unnecessarily created in the case of a member of Hindu Joint family. The statutory severance of the member of a Hindu undivided family will mean compulsory disruption of the coparcenary. Community of interest and unity of possession is the cardinal principle of a Hindu joint family. Therefore, the statutory severance of one member from the coparcenary would lead to the cesser of community of interest. We understand that as a result of judicial decisions there is no presumption that if one coparcener separates from the others the latter remain united and in such a case an agreement amongst

the remaining members of the joint family to remain united or to reunite must be proved. Therefore, a provision like clause 19 as recommended by the Joint Committee would lead to undesirable consequences.

Under clause 26 it is provided that either party to a marriage may petition the District Court for divorce on nine specific grounds. We generally accept them, but we feel further that mutual consent should also have been provided as a ground for divorce. There are sensitive people in society whose unhappy circumstances call for a dissolution of marriage, but they hesitate to face the unpleasantness and humiliation involved in the usual legal procedure connected with divorce. The unpleasantness involved in a divorce suit has in no way been reduced under the new provisions of the present Bill. We, therefore, feel the provision of mutual consent as one of the grounds for divorce would have helped to eliminate the above mentioned difficulty. As a safeguard against hasty divorce action it may be provided that in such cases divorce proceedings shall be kept pending for one year thus giving an opportunity to the contending parties to reconsider their decision and withdraw the petition if they so desire.

SUCHETA KRIPALANI.

K. A. DAMODARA MENON.

RAJENDRA PRATAP SINHA.

NEW DELHI;

March 16, 1954.

## VI

I have thoroughly examined all the aspects, issues and consequences which will result from retaining clause 19 (old clause 18) of the Bill. Still I strongly oppose the retention of this clause for the following reasons.

Marriage and property are quite different issues. These should be dealt with separately. Marriage is quite a personal affair. No one who marries should be penalised or restricted in the selection of his life partner because of any property consideration. This clause is actually a slur on the Special Marriage Bill because it forces severance of the man from his family. It will dissuade persons from taking advantage of the benefits accruing from marriage under this Bill. The clause will also have the effect of forcible division of the joint family and the breaking up of its homogeneity. The argument that woman will be a loser as she will not be able to have full rights over the share of her deceased husband, if not severed from the joint family by the deletion of clause 19, has no strength. First, it will not affect about 95 per cent. of the people who marry under this Act because only 5 per cent. of the people own any property in the country. And even among these 5 per cent., all the women would enjoy all the benefits of a joint family, co-operation and goodwill of all the family members. Besides, with the passage of time, the women's association in their new homes will cement the new family ties more strongly and remove the former consideration of caste and religion. The clause will be of advantage only to widows. And

these will not constitute more than .005 per cent. of the people who marry under the Act. I have full sympathy with such women. But we can help them by introducing a new legislation in the Property Act. But just for these few women I would not have the larger benefits refused to a majority of women.

SAVITRY NIGAM.

NEW DELHI;  
March 17, 1954.

## VII

This legislation though permissive in its objective, marks a definite step against the system, conception and significance of marriage in Hindu Society. The need for such a change is not really felt, nor asked for, by the Hindu Society in general. It is evidently the outcome of the agitation by a few who think and act on the Western model. It does little harm to the people who stick to the Hindu sacramental form of marriage and to the home life thereafter; and it does no good to those that are desirous of breaking them, as such breaks are likely to become more easy and frequent with the aid of this legislation.

The definition of "District Court" (clause 2) may have to be modified or amplified in view of the fact that in Madras and Bombay cities, matrimonial jurisdiction is vested in the respective High Courts and not in the city Civil Courts. Clause 2 as amended will create two jurisdictions over matrimonial affairs, the City Civil Court for cases covered particularly by the Special Marriage Act and the High Court for the rest. This distinction mars uniformity and so unnecessary. An amendment so as to give entire jurisdiction over matrimonial affairs to one or the other of the Courts is desirable.

In certain States, especially Madras and Andhra, cases covered by items 30, 34, 35, 36, 37 of Part I and 32, 35, 37 of Part II of the First Schedule are allowed by custom and not prohibited by law. These items have to be deleted from the first schedule; or the schedule has to be so amended as not to be applicable to such States.

The period of notice for objections (clause 16) is insufficient and will have to be increased at least in cases dealt with by Consular Officers.

The question of legitimacy of children of a void marriage or of an annulled marriage has to be more carefully examined in regard to inheritance. Merely calling them legitimate may not suffice; for if illegitimacy arises on other grounds, clause 24 may not be sufficiently helpful.

The provisions for divorce and procedure thereof are complicated; so also those relating to voidable marriages. They need further examination with a view to work the Act without difficulty.

B. RAMACHANDRA REDDI.

NEW DELHI;  
March 17, 1954.

## VIII

I beg to differ from the Report of the Joint Committee on certain points which are set out below, with reasons therefor.

1. *With respect to Applicability* [clause 1, sub-clause (2)].—When the Special Marriage Act (III of 1872) was passed, it was mainly at the instance of a certain section of the people, like the Brahmos for instance, who had found the various caste and sub-caste and other restrictions in Hindu marriages repugnant to them, and so wanted a marriage law of wider application. Even up to 1923, when a serious amendment to this Act was made, these caste restrictions continued more or less. But things have changed since then. At the present moment caste and sub-caste and *gotra* and *pravara* restrictions on Hindu Marriages have been all removed by legislation, among which may be mentioned:—

The Hindu Marriage Disabilities Removal Act (XXVIII of 1946).

The Hindu Marriages Validating Act (XXI of 1949).

The Arya Marriage Validation Act (XIX of 1937), etc.

As a result, there is no longer any bar to the marriage of Hindus among themselves, on the grounds of caste, sub-caste, *gotra*, and *pravara* restrictions. Only when a Hindu wants to marry a non-Hindu, is the Special Marriage Act found necessary.

With respect to the Muslims, the Special Marriage Act (with all its amendments) has never been made applicable to them; and the provision in the present Bill to make it applicable to all citizens of India (including the Muslims) has been almost unanimously condemned by the spokesman of the Muslim community.

With respect to other religious communities, like Parsis, Christians, etc., they too have their own personal laws of marriage within their respective communities, and so need not use the Special Marriage Act at all, except when intending to marry outside their respective communities.

On the grounds set forth above, and in view of the fact that in marriages within the same religious communities, it is desirable that their personal laws should be observed and the anomaly of various types of marriages within the same religious communities avoided, I beg to propose that to clause 1, sub-clause (2), the following be added, *viz.*:—

“but it shall not apply when both the citizens intending to marry profess the same religion”.

2. *With respect to clause 5.*—For “fourteen days”, the period in the original draft Bill, *viz.* “thirty days” be substituted.

3. *With respect to clause 6.*—In order that their particulars regarding age, degrees of relationship, etc., may be ascertained, and falsehood, trickery and other ugly features of run-away marriages exposed as early as possible, it is desirable that the parents (or guardians) of the couple intending to marry be informed at once. I beg to propose accordingly that to clause 6, sub-clause (2), the following be added, *viz.*:—

“and he shall immediately send a copy of such notice to the parents (or guardians) of the parties to the marriage.”

4. *With respect to objections and disposal thereof* (clauses 7—10).—In this respect, it seems to me that the provisions in the original draft Bill (clauses 7 and 8) were definitely better than those in the revised draft, approved by the Joint Committee (clauses 7 to 9). To invest the Marriage Officer who is to solemnise marriages, with the power and the responsibility of deciding upon "objections" in a judicial manner, is open to serious objection and liable to gross abuse, and they seem to be a definitely retrograde step. Besides the fundamental objection to conferring executive and judicial powers on the same person, there are more practical objections too. For instance, such an arrangement will render the task of the Marriage Officer exceedingly heavy, performing, as he will have to do, exacting judicial duties in order to decide on "objections", over and above his onerous duties of solemnising marriages. Further, it is likely to throw open the flood-gates of corruption, bribery and undue influence brought to bear upon the Marriage Officer by unscrupulous persons intending to procure the marriage by hook or by crook.

I beg accordingly, to propose that for clauses 7 to 9 of the revised draft clauses 7 and 8 of the original draft Bill be substituted.

5. *With respect to Chapter III.*—In this Chapter, provision has been made for the "Registration" of marriages previously celebrated in other forms. I think this entire Chapter is not merely uncalled for, but definitely derogatory and harmful.

The vast bulk of the citizens of India have been married according to the personal laws applicable to them, whether they be Hindus, Muslims, Parsis, Christians, or of any other community, and there is absolutely no reason why any provision for Registration of those millions of perfectly valid and recognised marriages should be deemed necessary. There has never been any demand for such registration of marriages already subsisting may be in some cases, for decades. It has been said that this provision is only "permissive" (and not "mandatory"); but I do not see any reason why the statute book should be loaded with such legislative lumber (even of the "permissive" type), which nobody wants.

Besides, there are serious objections to these provisions.

The very idea of the "Registration" of a subsisting valid marriage is derogatory conveying as it does a sense of slur on that marriage, and implying as it were that there is some sort of defect or incompleteness or lacuna in that marriage which requires to be covered by registration. Accordingly, the whole idea is repugnant to the social sense of propriety.

There are practical objections too for instance, a Hindu marriage, which under the existing law does not admit of divorce. Suppose this marriage is "registered", as proposed in this Bill. Then, automatically, it will be deemed to be a marriage solemnised under the Special Marriage Act, under which divorce is allowed; so that divorce in a Hindu marriage is let in by the back-door, so to say. That is most objectionable. A marriage, whatever its form, carries with it certain rights and obligations; those rights and obligations cannot be shirked or avoided or changed by the adoption of a new form by registration. That would be most anomalous and improper.

Consider again the children born of this marriage some may have been born before registration and some after. In the case of the former, succession takes place according to the personal law; while in the case of the latter, succession will be governed by the Indian Succession Act (XXXIX of 1925). Certainly, it would be a most anomalous and undesirable state of things.

I beg accordingly to propose that the whole of Chapter III, i.e., clauses 15 to 18, be deleted.

6. *With respect to Adoption* (clauses 20 and 21).—Inasmuch as this Bill should as far as possible be self-contained, I think that the provisions relating to Adoption should be retained in the Bill itself, and not left to be dealt with in a general law of adoption. I beg accordingly to propose that “the clauses 20 and 21 of the original draft Bill be retained.”

7. *With respect to Alimony* (clauses 34 and 35).—The provision for alimony, whether *pendente lite* or permanent, is a discrimination in favour of the woman, which is theoretically unjustified—particularly in cases where the woman is the guilty party. However, in view of the fact that women are generally dependent upon their husbands for maintenance, economic consideration has led to this discrimination in her favour. Hence due strictness must be observed with regard to the grant of alimony.

In the Indian Divorce Act (IV of 1869), accordingly it has been laid down that in no case should Alimony *pendente lite* exceed one-fifth of the husband's net income (averaged over the preceding three years) and the Parsi Marriage and Divorce Act (III of 1936) also contains a similar provision.

I beg accordingly to propose that to both the clauses 34 and 35, the following proviso be added, *viz.*:—

“Provided that alimony shall in no case exceed one-fifth of the husband's average net income for the three years next preceding the date of the order.”

DEVAPRASAD GHOSH.

NEW DELHI;  
March 17, 1954.

## IX

I wish to record my note of dissent on clause 19 of the Bill (old clause 18). Many members including myself pleaded for the deletion of this clause in the Joint Committee, but ultimately the Committee decided to retain it.

During the discussions on this Bill several members from both Houses of Parliament had spoken against this clause. From the precis of Public opinion from all parts of India, the majority of them have expressed for the deletion of this clause. The Rau Committee was also strongly against it.

The Hon'ble the Law Minister himself was rather doubtful regarding this clause and had said in his speech in the Council of States that “there is great force in the arguments against this clause”.

It may be recalled that this clause was not in the parent Act of 1872, which was initiated by the Brahmo leader Keshub Chunder Sen, and was passed into Act III of 1872. I have consulted some prominent members of the Brahmo Samaj. They are definitely against this clause.

The Act was passed eighty years ago when strong orthodox Hindu sentiment prevailed; time has shown since then many marriages even outside the Brahmo community have taken place, but there have hardly been any disruption in the joint family. The family members were free to choose their own course and sever connections or not from the joint family as each case demanded.

This new clause of severance from the joint family was introduced under the Gour's Amendment Act of 1923 as follows: "The marriage under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh, or Jain religion shall be deemed to effect his severance from such family". This new clause seems uncalled for as it compels separation automatically on marriage under this Act even though the persons concerned do not wish to sever connections. It has the effect of penalising which idea is unwholesome for the joint family and society. Besides to make a statutory severance of a member of a Hindu joint family may mean a compulsory disruption of the coparcenary.

The main object of this Act is to make it more progressive and to encourage marriages. It does not take religion into account and permits marriages between different castes and creeds. Then how is this clause 19 compatible to penalise a person marrying under this Act on religious grounds?

I humbly submit the argument in the report of the Joint Committee for retaining this clause is for simplifying the law of succession. It is not an ample justification for retaining this clause. The revised Hindu law of inheritance can only give the woman her rightful place.

I am definitely of the opinion that the retention of this clause will defeat the object of this legislation.

SUSHAMA SEN.

NEW DELHI,

March 17, 1954.

## X

From the Select Committee Report it is evident that, while reform is being introduced in the matter of marriage and divorce between people belonging to different communities, yet the various provisions in this regard are not in tune with the socio-scientific present day knowledge and is based upon ideas which are very much out-moded.

Clause 4.—We are of opinion that the contracting parties to the marriage should go through a medical examination and produce a medical certificate regarding their fitness for marriage. This is reasonable in view of the fact that the grounds for divorce are venereal disease, impotency, lunacy, idiocy, etc. Prevention is better than

cure. It is therefore better not to allow the parties to marry, rather than either of them make it a ground for divorce later. Society as it exists in India is hard on a divorced woman who is likely to suffer much more than a divorced man and will carry a stigma making her marriage difficult, apart from the mental shock that she will suffer at the discovery of the ailments and the expense involved in getting the divorce.

As the marriage officers are envisaged to be magistrates in district towns, a medical certificate could easily be obtainable as no district is without proper medical men. There should also be a penalty imposed for a false medical certificate given.

*Clause 15.*—A proviso has been added with regard to prohibited degrees for marriages solemnised otherwise than under this Act. We are strongly opposed to this proviso as it cuts at the very fundamental principle and provides a loophole for annihilating the very object embodied in this law. It will be seen that what is prohibited under clause 4 is permitted under clause 15, as people intending to marry having the relationship for example uncle and niece, etc., as laid down in the Schedule get married under their personal law and register themselves under this law later. This in our opinion, vitiates the very purpose of the Bill.

*Clause 24.*—We are of opinion that nullity of marriage on the ground that either party was below the age of 18 at the time of marriage should be avoided as this defect gets automatically removed by the lapse of time unless the objection is raised before either party attains the age of 18. Therefore (c) in sub-clause (1) of clause 24 be omitted. Impotency has been made a ground for nullity of marriage. The object of this clause for marriage being void is that it is incapable of being consummated. According to sexologists and other scientists not only impotency in man but also frigidity in woman can be the cause of nonconsummation of marriage and as such "frigidity in woman" should be added as a ground in clause 24 for nullity of marriage.

*Clause 26.*—The period prescribed in 26(b), 26(e), 26(f), 26(h) and 26(i) should be reduced by two years, three years, three years, one year and one year respectively. In the case of the husband he should have a reciprocal right to divorce on the grounds of the wife being guilty of bestiality and homosexuality.

We are of opinion that provision be made that when both the parties have lived apart and refuse to live together the marriage may on the petition by mutual consent of both the parties be dissolved and further provision be made for safeguarding the interest of the children, if any. This will avoid the making of ugly allegations against each other in order to gain a divorce.

*Clause 27.*—We are not in favour of prescribing any time limit of 3 years, after marriage for petition of divorce to avoid unnecessary suffering if, for instance, soon after marriage one of the parties has committed adultery. And as such sub-clause (1) of clause 27 be deleted and a consequential change be made in sub-clause (2).

*Clause 28.*—We are of the opinion that the period of one year after dissolution of marriage for purpose of remarriage is harsh and there seems to be no reason for it. For instance, if a person has been deserted the period required in this case for petitioning for divorce is three years. The divorce proceedings thereafter may take any time from 2 to 3 years to be completed, after which, under this clause, one must wait for a further period of one year for remarriage. This means that six years a period far too long, must elapse to enable a person to remarry.

*Clauses 34 and 35.*—We are of the opinion that when women are likely to inherit, possess and acquire property and this be economically more independent than the husband, it would be unfair that the husband should not get alimony for the divorce sought by the wife. We therefore feel that the question of alimony be made reciprocal in these clauses.

We may take the opportunity of moving suitable amendments to the Bill when it comes for disposal before the House.

VIOLET ALVA.

V. K. DHAGE.

K. RAMA RAO.

NEW DELHI;  
March 17, 1954.

## XI

1. *Clause 19.*—A person belonging to a Hindu undivided family may solemnise his marriage under this Act with the consent of the other members of that undivided family and there is absolutely no justification for compulsorily breaking up such an undivided family. The present clause 19 will have that effect. Under Hindu Law it is open to any member of an undivided family to effect severance of his interest. If in any undivided family either the member who has solemnised his marriage under this Act or any other member of that family who on account of such a marriage wants severance of his interest in the undivided family, he can do so. From this point of view such a provision is unnecessary.

2. This provision compulsorily effects severance of the interest of a member of an undivided Hindu family because of his marriage being solemnised under this Act. This is inconsistent with the spirit of the Act. Hindu Law recognises many and diverse forms of marriage some of whom have become obsolete owing to changes in the structure and formation of society. This Act is intended to bring the law in conformity with the changes undergone in the structure of Indian Society. The Authors of the Hindu Code which was once brought before this Parliament, after careful consideration added this form of marriage to the forms already recognised, for effecting a legal and valid marriage amongst the Hindus.

3. It looks as if this clause which is unnecessary is put in to frighten away Hindus from resorting to this form of marriage.

It may well be that a Hindu person belonging to an undivided family wants to marry someone outside his religious fold. If the

other members of his undivided family consent to this marriage there is no reason why that undivided Hindu family should be broken up. If they do not approve of it they can take steps to effect severance of the status and effect partition of the properties of that Hindu undivided family.

There is a large amount of misconception regarding the basis and spirit of real Hinduism. Hinduism in its true form is broad-based. It was capable of admitting all in its fold. It was not a religion in the narrow sense in which that word is being now used. Hinduism is not a religion in the narrow sense of that word but a culture which is capable of adjusting itself to changing circumstances. It is a way of life. It is therefore neither necessary nor desirable to insert such a clause from the religious point of view.

4. Clause 21 makes the provisions of the Indian Succession Act, govern succession to the property of any person whose marriage is solemnised under this Act and to the property of the issue of such a marriage. In the case of a Hindu therefore who solemnises his marriage under the provisions of this Act he and his heirs are cut off from the Hindu Society. In this view that I take of Hinduism this is not only unjustified and improper but harmful to the interests of real Hinduism and the society in general.

5. Succession to the property of a person whose marriage is solemnised under this Act and to the property of the issue of such a marriage should be in accordance with the law of succession applicable to the male party of such a marriage.

Clause 21 should therefore be amended to read as follows:—

“Succession to the property of any person whose marriage is solemnised under this Act and to the property of the issue of such a marriage shall be regulated by the law of succession by which the male party of such marriage was governed before his marriage under this Act.”

6. Impact of social conditions first led to the passing of the Special Marriage Act in 1872. The interests and policy of a Foreign Government and the then existing social conditions were however responsible for inserting in that Act a clause compelling the parties to such form of marriage to declare that they belonged to no religion. This was later remedied in 1930 by a Private Bill brought before the then Central Assembly by the Late-Dr. Hari Singh Gour; and the Act of 1872 was so amended as to delete the provision regarding such a declaration. A stage has now arrived when we are trying to replace this Act of 1872 by a new Act more in consonance with the changed society and in an atmosphere of political freedom. Marriage has now become more a personal and social matter. It has therefore become necessary to make a positive provision that a person who solemnises his marriage under this Act shall continue to be governed by his or her religion before such marriage and that the issue of such a marriage shall continue to be governed by the religion of the male party to such a marriage. I urge that such a provision should be inserted in this Bill.

In my note I have used the word Hindu as meaning and including Buddhists, Sikhs and Jains.

H. V. PATASKAR.

NEW DELHI;  
March, 17, 1954.

## XII.

There are a few points on which it is necessary to indicate the difference of my views from those indicated in the report and it is regretted that it is necessary to point them out in a minute of dissent. For various reasons, it was not possible to thrash out every point to conclusion in the Committee, as must be the case when even a marginal majority holds a different view. This is as it should be, and for this reason, it was considered better not to refer to some points after a certain stage of discussion but leave them to the minute of dissent. This saved time over discussion. However, it is equally a duty of a member not to withhold such points from the report. It is for this reason mainly they are being mentioned below.

### Chapter I

*Clause 2, sub-clause (2).*—In place of the words “any law for the time being in force relating to guardians and wards”, add the word “personal” before ‘law’ and after ‘any’ as this leaves out ambiguity.

### Chapter II

*Clause 4.*—It is desirable to add after (b) a clause making the production of medical certificate certifying freedom from lunacy, V.D., leprosy, no-pregnancy (as far as can be ascertained). At the time of the discussion of this clause this was not considered one of the conditions of marriage so necessary but in view of the later discussion on grounds for divorce etc. the need for such a certificate became obvious. It would not only facilitate decisions by the court but avoid harassment of either parties and particularly of women on invented grounds. This would be pointed out later when dealing with divorce, voidability, etc.

Most of such marriages take place in district places where, these days, even women doctors are posted or would soon be posted under the Five Year Plan Medical schemes. These marriages will be mostly amongst advanced sections of society, who will be always in a position to secure such a certificate from a woman doctor from a near about place, if necessary.

A suitable form will have to be added in the schedule for a medical certificate.

*Sub-clause (c).*—The age should be raised from 18 to 21 in the case of the boy. Usually unorthodox marriages are *initially* settled by the *parties themselves* at a very tender age. Parents consent follows as a matter of accommodation to the wishes of the youngsters even when it may be against their wise counsels. A boy of 18 is not in a position to take a realistic view of marriage and its responsibilities. If ever, it is necessary to consider the various factors involved in any early emotional affairs desired to be consummated by marriage,

it is so in the case of these unconventional marriages going against social and family traditions. A boy of 18, is almost a child in his outlook on life. It is necessary to make him wait till he can take a *mature* view of things even when guided by a parent or a guardian. The only guardians recognised under the Bill are father and mother and it may happen that in their absence other well-wishers like a brother, sister or even an uncle may not be able to give effective advice. This will spread indiscipline also in the family. Because while enjoying the shelter of a near relative, the wishes or advice of that relative will be flouted. A boy of 18 can hardly support a wife. A marriage at 21 is a good Malthusian barrier against rapid population growth. Present economic conditions too do not warrant encouragement to marriage to a man before 21 who might be saddled with the handicap of a family within a year of marriage! Can he finish his studies, and earn a living to maintain himself and a family before twenty-one!

(d) For the same reasons almost the limit here should be 21 in the case of a girl and 24 in the case of a boy when the step is being taken without the counsel or advice of a parent or a guardian. Men and women who wish to take their fate in their own hand, on their initiative and responsibility, should have reached a realistic age of majority and not only legal age of majority. Marriages under this Act have to be monogamous and facilities for divorce are made available. It is still more necessary, therefore, that the parties both under (c) and (d) of this clause should be more mature than envisaged under this section at present.

There is no disparagement to men in prescribing a difference of age between men and women. It is well known that psychological development as a rule is slower in the case of men. Nature has entrusted a woman with the bearing and upbringing of the young and as such she has an intuitive knowledge of security of married life. The freedom that man enjoys in this respect and the consciousness of the age old privilege of polygamy makes man care free and hence short sighted in his decision in the matter. Result of a hasty decision will be visited on their future but particularly so on women. The proposed raising of age limit along with the difference is to be viewed from this angle in particular.

Orthodox marriages wishing to avail themselves of this Act can be performed at even sixteen or eighteen or according to personal custom and registered under this after attaining the age required under this Act.

*Clause 12, sub-clause (2).*—It is necessary to add the word 'customary' after *any* and change the word *form* to 'ceremony' to maintain consistency and to give more dignity to the customary ceremonies. Under section 15 clause (a) the wording is "*a ceremony*" of marriage has been performed, etc. Use of the same terminology avoids confusion. Ambiguity has to be avoided as far as possible in framing legislation.

Marriage, to be recognised, must be solemnised by ceremony recognised by communities to which either party belongs. If it is performed by any innovation, not recognised by the community it cannot have any significance. Exchange of vows in front of fire,

that is making fire a witness, is recognised amongst more than one communities and a simplified version of this could be recognised specially if it happens to be the custom of one or both the parties. But supposing a couple were to say that they had invented a form to suit their personal fancy, of eating in one plate in front of a few friends and so considered themselves married. This would be very irregular and lead to confusion inasmuch as that form has not the sanction of custom or usage.

The addition of the two words suggested or rather the addition of one word, *viz.*, "customary" and the change of form to ceremony being more appropriate and consistent would not be a hardship to any one.

*Clause 14.*—New notice when marriage not solemnized within three months:—In this connection the case, where the court does not uphold the objection, and more than three months have elapsed as might easily happen, in some cases, has to be considered.

It would be absolutely unfair to require such a couple to give a fresh notice if they wish to be married in the same marriage office. Twenty-four hours notice should be considered adequate in such cases. The couple will have to go through unnecessary waiting period of one month etc. again. This clause can come under section 8 as clause 3.

*Clause 15 (a).*—After the words 'a ceremony' the words '*recognised by the customary law of either parties to the marriage*' must be added to give sanction and dignity to that ceremony or rather to derive these from that ceremony. Law can recognise the authority only of such ceremonies and not of 'a ceremony'. Any ceremony can have no significance for validity. It cannot have the sanction of either custom or usage.

This point has been discussed by me under clause 12 above.

(1) Any Marriage.....may be registered under this chapter.....

Instead of giving all the conditions of a registrable marriage it should be enough here to mention 'that a marriage which fulfils the conditions of section 4, for a valid marriage can be registered'.

Sub-clause (e) of clause 15 permits a marriage performed according to law or custom or usage having the force of law, to be registered. Thus a 'matul kanya marriage' of the South or the 'uncle niece' marriage among the Lingayats, or a paternal cousins' marriage of the Muslims can be registered but it cannot be solemnised under section 4 (e) because it would come under the degree of prohibited relationship as given in the First Schedule. For the sake of consistency and to prevent circumvention of section 4 by resorting to section 15 at a later stage it is necessary to do the one or the other. The list of prohibited relationship might as well be curtailed for this reason.

Obviously what is permissible for registering a marriage should be permissible for solemnizing a marriage under the same law in the first instance.

#### Chapter IV

19. In addition to the explanation given in the report of the Joint Committee on clauses 19, 20 and 21 it is necessary to make a few observations as there are some members who stand for deletion of the

clauses. They say, that society has advanced far enough since 1923, not to require severance from family for marrying in an unconventional manner. Besides this Act will now provide for perfectly conventional marriages too!

In my opinion there could be provision for supporters of severance as also opponents. Those who wish to avail themselves of the benefits of the Indian Succession Act, will be automatically severed and those who wish to continue under their own personal law will not be severed if the former execute a document at the time of the marriage to the effect.

In the draft of the Special Marriage Bill circulated to the State Governments for opinion perhaps there was such a provision envisaged. In my opinion such a provision alone can meet both the views.

Even now a clause has to be inserted by which the married couple could execute a document electing to be governed by his personal law or the Indian Succession Act. Those who are governed by the Indian Succession Act will be severed from the family but by mutual agreement can later reunite.

There is every justification for such an option. If some section of the joint family is orthodox, there is no justification why that family should sacrifice its views to accommodate a reformer member of the family in their common household, and who in addition wants special privileges for his own wife and children to the exclusion of the other members of the joint family. He cannot have it both ways and expect a share in the ancestral property also continuously. He can take his share (under Dayabhaga after the death of the Head of the Family, but only interest accruing till the date of his marriage) and "sever" after that. If not he continues in the family and does not opt for being governed by the Indian Succession Act. This is equity. This is reciprocity.

It is necessary to explain "severance" under this section to keep it beyond the need of interpretation and legal quibbling. This will save complications with regard to future liabilities on a joint family property or else a vague position will not only bring in liabilities but would mean so much litigation.

#### Chapter VI

*Clause 25 Voidable Marriages.*—Sub-clause (i), (iii) and proviso (c) are likely to cause hardship to a woman, and likely to be exploited by man. If the clause for compulsory medical examination is added, as suggested earlier, these two can be deleted without any hardship. Even otherwise they should be deleted. Cases of premature births, and of conception by the husband before marriage have to be considered as possibilities. A man's subsequent denial as a convenient escape, has to be thought of. These two clauses are particularly objectionable for a man goes scot free even after such escapades. They would only victimize the woman; for nature's throwing the responsibility of child bearing on her.

*Clause 26. Divorce.*—Although it was decided that leprosy is not an infectious disease except in an advanced stage and that it was curable, it is put here under (f) as a condition for divorce. In that

case V.D. also must be added. It is difficult to prove who had V.D. first and in the case of leprosy it is not necessary to prove who had it first as until the disease is advanced it cannot be contracted and then who is to divorce whom as both will have leprosy only one in a severer form than the other! In the case of V.D. premarriage medical examination will help to a great extent, unless the disease is contracted later on.

The period for obtaining divorce including the time taken over suit should be five years or else it will fail to afford real relief. Sub-clauses (e) and (f) allow five years and as it is a case of allowing time for recovery it is an exception. In sub-clause (g) the period should be three years.

In sub-clause (c) 'of' should be put in place of 'for' after the words "is undergoing a sentence of imprisonment". The word 'for' changes the meaning of the sentence altogether.

### Chapter VII

*Clause 31.*—Proceedings must be "in camera" instead of may be in camera. In any case they should not be open to the press. Even if some party or parties are not careful to request that the proceedings should be in camera, as provided for at present it is to be at their request that they would be so, they should never be open to the Press, in the interest of society. There are two strong reasons for this. Not only it demoralises public taste, it affects unfavourably the lives of the children of the marriage.

In not allowing the marriage notices to be published in the Government Gazette even, an argument was put forward that press should have nothing with marriages of two persons. The same argument should hold good in not allowing divorce proceedings to go to the press and cheap papers at that.

*Clause 36.*—Some provision to provide for the upbringing of the children according to some agreed faith will help to regulate the life of the children until they come of age. This will be helpful in the event of divorce or separation or death of one of the parents.

*Clause 44.*—The addition of the words "or enters into the register" after the words "Marriage Officer who knowingly or wilfully solemnizes" is necessary.

NEW DELHI;

SEETA PARMANAND.

March 17, 1954.

### XIII

Though I am strongly of the opinion that the principle underlying this Bill is a violation of the fundamental rights of the various communities in India to follow their respective religious practices and religious laws, this is not the occasion for me to discuss that

aspect of the Bill. I would like to add this note on certain clauses of the Bill on which I differ from the majority of the Joint Committee.

### *Chapter I*

*Clause 1.*—In view of the fact that the opinion of the Muslims is definitely against the Bill as it is against the Shariat which governs them as stated by the Law Minister in the Council of States it is unfair, unjust, illegal and unconstitutional to force this Bill on the Muslims. No doubt it is urged that the provisions of the Bill is optional as it applies only to those who are willing to take advantage of the Act. This argument is fallacious. Those who register their marriages under the Act are governed by the Succession Act and hence those who would have inherited from them under their personal law are deprived of such right of inheritance, but on the other hand the persons who register their marriage under this Act are not debarred from inheriting from their relations under their personal law. Thus third parties are definitely affected adversely by this Bill, and mutuality in the law of inheritance is violated. Therefore bare justice requires that a proviso should be added to clause 1 to the effect that this Act shall not apply to Muslims.

### *Chapter II*

*Clause 4, sub-clause (c).*—In view of the fact that by the marriage permitted by this Bill young men and women are being cut off from their families, age of 21 should be prescribed as a condition so that they may be capable of bestowing mature thoughts and better discretion in arriving at the decision. If this change is effected there will be no necessity for making any provision for the consent of the guardian.

Provisions of clause 10 regarding the procedure on receipt of objection by the Marriage Officer abroad is discriminatory and offends against the provisions of article 14 of the Constitution. Therefore it has to be amended so as to be in accord with provisions in clauses 8 and 9. This can be provided for. There is no practical difficulty.

### *Chapter III*

The extension of the provision of this Bill to registration of marriages already celebrated under other forms is not at all advisable or proper and is fraught with consequences which are unfair and will lead to complications of various kinds. I am strongly of opinion that Chapter III should be entirely deleted.

Under clause 18 even children born after the date of the original ceremony of marriage and long before the registration under the present Act may be deemed to be issues of a marriage under this Act, with the result that by operation of section 21 of the Act their properties also will devolve under the provisions of the Succession Act though they may not be consenting parties to the registration of the marriage or the consequences thereof. This is opposed to all principles of justice and fundamental principles of jurisprudence.

### Chapter IV

Where both parties to the marriage registered under this Act belong to the same religion, their issues also should be deemed to belong to the same religion and the properties of such parents and their issues should devolve according to the law of the religion to which they belong. If the parties to a marriage registered under this Act belong to different religions their properties should devolve according to the law of their respective religions and the issue of such marriage must be deemed to belong to the religion of the father and the properties of such issues should devolve according to the laws of the religion of his father to which he shall be deemed to belong.

The Bill should be amended to the above effect.

March 16, 1954.

B. POCKER.

### XIV

1. I find myself in complete accord with the main object underlying this Bill; namely, that it should be possible for any person in India and for any Indian national abroad to contract a valid marriage irrespective of the religious faith professed by either party. I also subscribe to the view that in addition to the existing laws of marriage which operate within narrow sectional and denominational ambits, there should also be a general law recognising marriages of a civil nature, sufficiently broad-based as not to impose unreasonable impediments on marriages, while at the same time not so lax as to permit practices which have been viewed with abhorrence by a great majority of the people of this country.

2. During the course of the deliberations of the Joint Committee I was through the courtesy of the Chairman fully enabled to exchange points of view with my colleagues, and as a result of the collaborations, the Bill has emerged from the Joint Committee after embodying material changes. To the extent to which I have not been able to see eye to eye with the honourable Members who have signed the majority report, I am constrained to submit my Note of Dissent.

3. Apart from the main controversial issues noticed by me, and some of which are to my mind unwelcome and uncalled for innovations upon our ancient social structure, I have ventured to suggest certain modifications in the drafting, which in my humble judgment are likely to contribute to clarity of understanding and interpretation to a great measure.

4. I submit below my comments clause-by-clause on the principal provisions of the Bill.

#### *Clause 2 (f) and clause 4(e)*

5. *Definitions*.—As clause 2 (f), Explanation I (c) to clause 2 and clause 4 (e), Explanation I, are interconnected, they may be examined together. In clause 2 (f), the degrees of prohibited relationship have been enumerated by reference to two lists in Schedule I.

6. *Prohibited Relationship*.—Incestuous relationship is viewed by all societies with unmitigated repugnance, and it will be a proper

concession to the sentiments of a large number of people, if the degrees of prohibited relationship are allowed to stand as they were under the Special Marriage Act (III of 1872). The lists of persons mentioned in two groups in Schedule I, who are related by consanguinity, should be enlarged so as to include among prohibited relations all those persons whose relationship can be traced through some common ancestor who stands to both in a nearer relationship than that of great-great-grand-father or of great-great-grand-mother, or unless one of the parties is the lineal ancestor or the brother or sister of such lineal ancestor of the other.

In my opinion the list of relations related to each other by affinity requires no change.

7. *Dattaka and Kritrima adoption only.*—Clause (c) of the Explanation requires clarification, and should read as under:—

“relationship by *Dattaka* and *Kritrima* adoption as well as by blood;”

8. The legal concept of adoption whereby a stranger is engrafted to the family of the adopted father so as to acquire the status of a son born to him, is foreign to other systems of law in India excepting the Hindu law. Relationship by adoption as a bar to marriage should be confined to cases of strict Hindu Law adoption. The notion of adoption as understood among the Hindus is unknown to the laws governing the Muslims, Christians and other non-Hindus. Adoption of a child by a non-Hindu does not create any relationship either with the adopter or with his kinsfolk, except perhaps that of a donor or donee if the act of adoption is accompanied by a gift. In such cases the adoption partakes at the most of the nature of an appointment of an heir, and that should hardly be an impediment to marriage on the ground of prohibited relationship. In any case there is no reason whatsoever for extending the disqualification to the personal relations of the adoptee.

#### Clause 4 (b)

9. *Idiots and lunatics.*—In this clause for the words “neither party is an idiot or a lunatic”, there should be substituted the words “neither party is an idiot or person of unsound mind”, as given in section 3 (5) of the Indian Lunacy Act (IV of 1912). The retention of the words “an idiot or a lunatic” is apt to create confusion, because idiocy is a species of the genus lunacy and the latter expression is of wider amplitude. It is also more appropriate to give to the same words occurring in different Acts the same meaning so far as possible.

#### Clauses 4 (c) and (d)

10. *Minimum age.*—The minimum permissible age for contracting marriage under this Bill should be raised from 18 years to 21 years. It is very desirable that the parties contemplating the solemnisation of a civil marriage should be sufficiently mature in mind, so as to realise the consequences of what may turn out to be an ill-advised selection. If age limit is raised to 21 years, then sub-clause (d) becomes redundant and should be omitted.

11. *Guardians' consent.*—If, however, the age limit is fixed at 18 years, then the words “his or her guardian” introduce an anomaly

which is not cured by the addition of the new sub-clause (2). Under the Guardian and Wards Act (VIII of 1890) read with section 3 of the Indian Majority Act (IX of 1875), a minor ordinarily attains his age on completion of eighteenth year. To this, there are only two exceptions when the age of minority extends to 21 years, firstly, where guardian is appointed by a court of justice within the provisions of Chapter XXXI of the Code of Civil Procedure; and, secondly, where the superintendence of the property of a person has been assumed by any Court of Wards. Outside these two exceptions, there can be no guardian of a person above the age of eighteen years. Guardianship of such a person is contradiction in terms. It is simply *non est*.

12. *Parents' consent*.—Since it has been uniformly felt that persons between the ages of 18 and 21 years should obtain the consent of a person *in loco parentis*, the law should simply impose a condition precedent, to the effect, that the marriage of such a person should not be solemnised unless the written consent of the father has been obtained; and if he be dead or be a person of unsound mind, the mother's consent in writing has been given. Failing parents, the consent should be taken from an uncle or aunt or from an elder brother or sister. In the case of persons who have no such relations living, written approval of a District Judge, who may be deemed to be *in loco parentis* should be made available before the solemnisation of such a marriage. The use of the word "guardian" should be avoided.

#### Clause 4 (f)

13. *Extra-territorial Jurisdiction*.—Where marriage is to be solemnised outside India, one party only need be a citizen of India. This clause if not suitably amended will not avail where a citizen of India, while residing abroad, desires to marry a person even of India origin, though not a national of India. It is not to be forgotten that a large number of Indians who are not our citizens are settled in different parts of the world. There will be no way to solemnise a marriage between two persons of the above description under this Act unless they travel all the way to India for this purpose.

14. *In England*.—This clause should be modelled on the pattern of the *Foreign Marriage Act of 1892 of England* which is given extra-territorial jurisdiction. This Act applies even where one of the two parties is a British subject. The relevant provision of the *Foreign Marriage Act, 1892* (55 and 56 Vict., c. 23), is reproduced below for ready reference:—

"1. All marriages between parties of whom one at least is a British subject solemnised in the manner in this Act provided in any foreign country or place by or before a marriage officer within the meaning of this Act shall be as valid in law as if the same had been solemnised in the United Kingdom with a due observance of all forms required by law."

15. The Indian Foreign Marriage Act (XIV of 1903) was enacted to give effect to the British Act, for purposes of solemnising marriages of British subjects *inter se* or with foreigners. This Act has now been adapted by the Adaptation of Laws Order, 1950.

16. *In India*.—It is a matter of regret that whereas extra-territorial jurisdiction of a British Act, where only one of the intending spouses need be a British subject, is not only recognised by an Indian Act, but all facilities for solemnisation of marriages in this country under the foreign law are being provided. On the other side the Special Marriage Bill is chary of enabling an Indian citizen to solemnise his or her marriage under an Indian statute with a non-citizen abroad. If it is permissible under the Bill for an Indian citizen to marry a foreigner in this country, there is no sound reason why marriage between the same persons cannot be solemnised by our Marriage Officer in a foreign country. This provision will lead to absurd results and cause unnecessary inconvenience as the following illustration will show.

17. *Limited jurisdiction*.—Mr. A, a citizen of India who is living in Brazil and doing business there, wants to marry Miss B, a girl of Indian origin from British Guiana but who is not an Indian citizen. If they were both citizens of this country they could be married in Brazil by anyone of our diplomatic or consular officers exercising the powers of Marriage Officer under this Act. Their marriage under this Act can be solemnised only if they come all the way to India, as Marriage Officers in India alone are empowered to perform marriage between any two persons regardless of their nationality. On the other hand a British subject in similar circumstances as Mr. A can solemnise his marriage with a non-Britisher, as the Indian Foreign Marriage Act is there to minister to the needs of the British statute.

It is difficult to defend clause 4(f) in this respect either on grounds of principle or policy.

#### *Clauses 5, 6, 7 and Schedule II*

18. *Period of Notice*.—Amendments to clauses 5, 6 and 7 reducing the period of notice from 30 days to 14 days are destructive of the very object of notice. These provisions, and those that follow, seem to encourage hasty, promiscuous and run away marriages without the saving grace of *locus* and *penetentiae*. When a residential qualification is insisted upon by law, the intention is that a party gets known to the people of the locality. When a person can contract marriage at any place where he or she has stayed for a period of 14 days only, the likelihood of notice reaching those who may be in a position to raise valid objections becomes very remote.

19. *Publication of Notice*.—The only form of publication of the notice prescribed by clause 6 is by affixation of a copy in the office of the Marriage Officer. There is no provision as to the sending of a notice of proposed marriage to the parents or other relations of the parties concerned. The Bill does not provide for publication of notice in any newspaper. The real purpose of a notice is to convey information to those who may like to raise objections to the proposed marriage, but the short duration of the period of notice, and the perfunctory manner of its publication, are calculated to prevent the communication of the information about the intended marriage. In a vast majority of cases, the notice of the proposed marriage will never reach those who may be in possession of facts, which if disclosed would prevent the solemnisation of marriage. The period of

notice is so short and the manner of its publication so circumscribed that it will never reach those for whom it is intended. Even if it reaches them they are hardly given adequate time within which they can submit objections to the Marriage Officer.

20. *Objections.*—Ordinarily objections to a proposed marriage are not going to be raised. It is only where it is felt that the consent of a girl has been obtained by fraud, stratagem or trickery or where her age is being falsely represented to be above 21, or where a fraud or fabricated document is presented in proof of the consent of the parents, that it will be considered proper to prevent the performance of the contemplated marriage by raising appropriate objections. It is extremely regrettable that the law should conspire, as if it were, with the runaway couple, in order to deprive the aggrieved parents of a moonstruck child, by creating procedural obstacles, with a view to keep him from reaching the Marriage Officer within the specified time.

21. *Inadequate opportunity.*—Our country is a land of long distances, and the means of quick communication and transportation, especially in rural areas, are far from satisfactory. The nature of the objections is restricted and even within that narrow scope, fair opportunity is not being provided for raising even the most fundamental objections.

22. *Insufficient Notice.*—The provisions in clause 6 regarding the transmission of a copy of notice to the Marriage Officer of the district of permanent residence of the party giving notice, is equally illusory, unless it were also provided, that the notice should be sent to the parents of the intending spouses.

23. Under clause 7(2) marriage may be solemnised 30 days after the publication of notice in the office of the Marriage Officer of the district who has received the notice. It is quite possible that this period may elapse by the time the copy of notice is transmitted to the Marriage Officer of the district of permanent residence of the party notifying, or a very short time is left before the receipt of the information and the date of the proposed marriage.

24. *Notice to parents, etc.*—If the provisions relating to giving and publication of notices, and to raising of objections, were not designed to be so blatantly fatuous, at least a clause might have been added, requiring the service of notice on the parents or near relations of the parties concerned and then allowing them a period of 30 clear days from the date of the service of notice, for raising objections, if any. The provisions as to giving of notice have been drafted in a manner so as to keep back the communication of the news of the proposed marriage. The unhappy and helpless parents of a gullible child who has been ensnared into a hasty marriage solemnised in violation of the provisions of clause 4, will justly attribute the disgrace of their family, to the calculated conspiracy of law, with the defiler of the chastity of their daughter.

25. I regret, I cannot lend countenance to the provisions of law which are basically unjust, manifestly partial, and carefully devised to connive at a deliberate contravention of the essential conditions, precedent to the solemnisation of a valid marriage.

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*Clauses 8 and 9*

26. *Defective Procedure.*—The procedure provided for scrutinising objections seems to be perfunctory on purpose. Thirty days, within which the objections must necessarily be disposed of by the Marriage Officer, may be allowed to expire without completing the enquiry. It will not be difficult to invent specious grounds and to create on purpose conditions under which a conscientious Marriage Officer may not be able to give his decision. A considerable time may be wasted in the process of summoning and enforcing attendance of witnesses, or in examining them, or in allowing discovery and inspection, or in search of documents, or in issuing commissions for the examination of witnesses, or in awaiting the report of the Commissioners.

27. *Procedure criticised.*—It is a travesty of law to make such a law, which can have the effect of brushing aside the objections on merits, on the plea that the time during which justice was to be dispensed has expired. It is unfair to an upright officer, unjust to an honest objector, and it is a wrong done to the society, if a valid impediment to marriage is stifled, on the plausible plea, that the enquiry could not be completed within time though through no fault of the objector. The bounds of injustice have been further extended by the succeeding clauses.

28. *Right of Appeal.*—Sub-clause (2) of clause 8 grants the right of appeal only to the intending spouses in case the objections to the solemnisation of their marriage are well founded. But it studiously withholds the right of appeal from the objector, whose objections are either rejected or which could not be disposed of on merits, within the prescribed time.

29. *Defects indicated.*—A procedure which dispenses with enquiry into the objections howsoever substantial, merely on the ground of the expiration of the period allowed, though through no laches of the objector, and a law which then forbids access to a court of appeal while granting that right to the opposite side, is a mockery of all juridical principles. The above provisions have made law a farce devoid of all fairness. I am not aware of any other law, which has contaminated the very foundation of justice to which it owes its existence, which has abused the very process, which emanates from it, which slyly winks at immorality, which it proposes to prevent, which colludes with the wrong-doer whom it pretends to punish, which penalises the unwary objector who dares to approach its portals, which jeers at justice which it professes to uphold and which consorts with vice to scoff at virtue.

30. *Penalty.*—The final *coup de grace* is given by clause 9 sub-clause (2) to the foolhardy objector, who rashly ventures to invoke the aid of law, and in the result finds himself mulcted up to one thousand rupees, a high price for his temerity and an unrighteous contribution to the dowry.

It would have been perhaps more honest though not just to take away the right to make objection than to confer the right but with a dice loaded against the objector and with a sword of Democles suspended over his head.

31. *Other Remedy.*—It was contended on behalf of the protagonists of these provisions, that another remedy by way of a regular suit could be availed of by the objector, and he could get the marriage declared null and void by a court of law. It is a cold comfort for the parents and relations of a girl to be told after the marriage has been solemnised, the girl has been deflowered and has perhaps been made *en ceinte*, that although the other party had a previous spouse living, or that he is a person of unsound mind or that he comes within prohibited degree of relationship or that the girl in fact was of nonage, or that her consent had been obtained by fraud or false representation, they could now salvage their irretrievable honour by seeking law and securing annulment of the marriage, which should never have been permitted to be performed. Where the girl has become pregnant, the *ex post facto* remedy by way of a suit is merely a palliative which is worse than the disease, that it claims to relieve.

32. *Scope of Objections.*—Lastly, it is worthy of note that the objections which can be raised at the preventive stage are confined to the few mentioned in section 4, and do not include those that are enumerated in clauses 24 and 25.

*Clause 12 (2)*

33. *Form of Marriage.*—The insertion of the word “recognised” before the word “form” is necessary. Parties may be allowed to choose any one out of the recognised forms of marriage and it should not be left to them to devise their own form.

*Clause 13 (2)*

34. *Effect of Marriage Certificate.*—The deletion of the words “but nothing contained in this sub-section shall apply to render a marriage valid which would otherwise have been invalid” is neither called for nor desirable. These words if retained will clarify the legal position and leave nothing to doubt.

*Clause 15 (e)*

35. *Uniform law.*—This clause should have been left as it was without inserting the additional words. The rules pertaining to avoidance of marriage on the ground of the parties being within the degree of prohibited relationship should be uniform for all those to whom the Act is going to apply. The insertion of the words “unless the law or any custom or usage having the force of law governing each of the parties permit of a marriage between the two” will lead to incongruous results.

36. *Marriage under custom.*—Marriage of persons within the degree of prohibited relationship, though sanctioned by custom or usage cannot be performed under this law and the Marriage Officer will refuse to solemnise it, but that provision can easily be circumvented by simply going through the form of marriage sanctioned by custom and then by getting the marriage registered under clause 15. The Marriage Officer will virtually tell such a couple—

“I cannot solemnise your marriage under Part II because you are related to each other within the prohibited degrees,

but I will enable you to overcome this obstacle by registering your marriage under Part III, if you come to me after performing marriage under custom. In this way you can exercise all the rights and enjoy all the privileges in the same manner as if your marriage had been solemnised by me under this Act."

What is the use of enacting a law which can be evaded with impunity?

*Clause 19*

37. *Severance from Joint Family*.—Clause 19 ought to be omitted. When disruption of joint status or severance from undivided family can be effected by unequivocal manifestation of intention to sever, without the necessity of executing a document, and without actual division of the joint property by metes and bounds, the insistence on automatic severance, despite the wishes of the other co-parcener to the contrary, will not be in the interest of joint family. This is particularly so, when the family is engaged in a joint business or joint venture of a commercial nature. It should not be assumed that marriage of a member of joint family with a woman professing a different faith is necessarily un-welcome. The social approach has now undergone considerable change from orthodoxy to catholicity, since the passing of the Special Marriage Act of 1872. Moreover when severance can easily be effected by a unilateral declaration, the matter should be left to the wishes of the members of the un-divided family in whose fold a woman professing a different faith has entered.

*Clause 21*

38. If I have successfully made out a case for the omission of clause 19, then this clause should be modified so as to exclude from its operation those persons married under this law who have continued to remain members of un-divided family.

*Clause 23*

39. *Cruelty to Children*.—I suggest that judicial separation may also be obtained on the ground of persistent cruelty to children. Under section 1(10) of the Summary Jurisdiction (Separation and Maintenance) Act, 1925 of Great Britain, persistent cruelty to children is treated as a ground for judicial separation.

*Clause 24*

40. *Annulment of Registered Marriages*.—The provisions of clause 24 should apply not only to marriages solemnised under this Act but also to marriages solemnised under other laws and customs but registered under clause 15 of this Act. I suggest the insertion of the words "or registered" after the word "solemnised" in clause 23(c)(1).

41. I may also point out that if the amendment to clause 15(e) is not deleted corresponding modifications shall have to be made in clause 24(1)(i).

*Clause 25*

42. For the reasons already stated, it is also desirable that the words "or registered" be inserted after the words "Any marriage solemnised" in clause 25(1).

Clause 25 (1) (ii)

43. *Venereal Disease*.—Marriage should be annulled under clause 25(1)(ii) only if the respondent was suffering from an incurable venereal disease in a communicable form.

Clause 25(1)(iv)

44. *Coercion, undue influence, misrepresentation, etc.*—This provision requires material alteration in order to include cases where consent was obtained by parties not only by force or fraud but also under coercion, or, where it was induced by undue influence, or misrepresentation, or under a mistake of fact essential to the agreement of marriage. Where consent is founded on error, force or threat of force, fraud, coercion or misrepresentation, it is not a free consent and should be deemed to be an impediment rendering marriage voidable.

45. *Free Consent*.—Civil marriage as understood in this Act, is essentially in the nature of a contract between two adults, and the ordinary principles which govern contracts in general, or which render them nugatory, must be applied. One important principle is embodied in the well known maxim *Consensus non concubitus facit matrimonium* which means that consent and not coition constitutes marriage.

46. To the same effect is another maxim "*Nuptias non concubitus sed consensus facit*" meaning not cohabitation but consent makes marriage.

47. *Period of Limitation*.—First proviso to the above sub-clause needs modification in the light of what has already been submitted. I also feel that this proviso requiring the proceedings to be instituted within a year of the date of the marriage will work hardship in those cases where knowledge of the disease was successfully withheld from the petitioner by the respondent for a period of one year. Where the respondent has to live for a year after marriage separately and away from the petitioner as for example under exigencies of service, it would be more just if the period of one year should be counted from the date when he comes to know of the grounds mentioned in sub-clauses (ii) and (iii).

Consequential changes are also required in part (a) of the second proviso.

Clause 26(a)

48. *Grounds of Divorce*.—The provisions of divorce are going to be availed of virtually for the first time by the parties married under this Act, who happen to belong to Hindu faith. It will, perhaps, not be improper to suggest, that having regard to human nature, male propensities, and fundamental differences in the mental outlook and approach of the two sexes, the provisions contained in section 10 of the Indian Divorce Act (IV of 1869) should be retained, in cases where the wife petitions for dissolution of marriage. In other words, the wife should be permitted to present a petition for dissolution of the marriage on grounds of adultery only where the husband has been

guilty of either incestuous adultery, or of bigamy with adultery or of adultery coupled with cruelty or desertion.

*Clause 26(c)*

49. *Ibid.* Although the rigour of clause (c) has been to some extent ameliorated by addition of a proviso, it will still perpetuate injustice in a large number of cases. There was a number of offences which did not involve moral turpitude in which the sentence imposed may exceed seven years, and there may also be other offences involving moral turpitude, but the commission of those offences might have been abetted by the party seeking divorce. There may yet be another class of offences which might have been committed with a view to protect or to avenge a wrong done to the honour of the wife. For instance a person who has caused grievous hurt by dangerous weapon can be sentenced to transportation for life or imprisonment for ten years. If such a person has been punished for this offence, which he committed against a paramour of his wife, it will be extremely immoral, if his conviction were to furnish cause for dissolution of the marriage at the instance of the guilty wife. This clause should better be omitted and if it is to be retained, then it should be restricted to certain specific heinous offences. As otherwise even a political worker may run the risk of not only losing his liberty but also his wife, if he is sentenced to undergo imprisonment for seven years for commission of a political offence.

*Clause 26(d)*

50. "*after*".—The word "*since*" should be substituted by "*after*" as the former suggests continuity from the time of the commencement and it means both '*after and in the meantime*'.

*Clause 26(e)*

51. *Incurable Insanity*.—This clause, to my mind, is unduly harsh. Once it has been ascertained that the other spouse is incurably of unsound mind, then it would not matter, whether the other spouse has to wait for a short or long period. It must be an unendurable agony to live and consort with such a person for a continuous period of not less than 5 years before the petition for dissolution can be presented. If incurable insanity is to be deemed as a ground for dissolution of marriage then a shorter period should suffice after it is ascertained that the malady is not going to yield to treatment.

*Clause 26(f)*

52. *Incurable Leprosy*.—For the above reasons, I will also suggest the insertion of the words '*incurable*' before '*leprosy*'.

53. The last part of clause 26 where it furnishes additional grounds of divorce to the wife, has introduced an incomprehensible inconsistency.

54. *Unnatural Offences*.—Bestiality is an offence which can be committed by a man as well as by a woman. In its heinousness it is equally abominable. There is no reason why the wife alone should be entitled to divorce, and the same right should be denied to the husband, when the same offence has been committed by the wife.

55. The other unnatural offence, if strictly construed can be committed by the male partner only, but a woman also can consent to being a catamite. I therefore suggest that the language of section 377 of the Indian Penal Code should be borrowed, with suitable changes, and the commission of an unnatural offence by either party, unless condoned by the petitioner, should be made a ground of divorce.

*Clause 32(b)*

56. *Connivance*.—Divorce should be refused in all cases where the petitioner has been guilty of intentionally aiding or abetting or of conniving at, or being a wilful accessory to matrimonial offence. This consideration should not only be restricted to condonation of adultery but also to that of unnatural offences.

Where an act of desertion is forced on the respondent in consequence of the conduct of the petitioner, no relief should be granted. A suitable amendment should be made in order to insure that escape is not confused with desertion.

*Clauses 34 and 35*

57. *Alimony*.—These clauses are inequitable and can cause undue hardship to the innocent male petitioner.

58. I beg to be excused for submitting a note of dissent of inordinate length but owing to the multifarious ramifications of marriage and divorce law, affecting not only the parties, but also their children and the society and incidentally property. The several matters that have appealed to my mind to be of some importance, I have placed for the consideration of the honourable Members, even at the risk of being somewhat prolix.

59. *Conclusion*.—The Bill is a highly controversial measure, on which opinions can be sharply divided. It is going to affect a very large number of people; and it is bound to influence our moral and social concepts. It will also to a considerable extent determine our attitude towards sexual behaviour of our males and females. It is a revolutionary measure fraught with grave risks and contains immense possibilities both for good and evil. Before the new marriage and divorce laws of the country receive legislative imprimatur, every point of view deserves to be considered with the utmost care and caution.

60. I may finally express the hope that it should be the effort of law makers to see that law does not offer affront to justice and vice is not permitted to discomfit virtue, at least not with weapons presented by law.

NEW DELHI;

TEK CHAND.

March 17, 1954.

## THE SPECIAL MARRIAGE BILL, 1952

(AS AMENDED BY THE JOINT COMMITTEE)

(Words underlined or sidelined indicate the amendments suggested by the Committee; asterisks indicate omissions.)

**Bill No. IIIA of 1952.**

A Bill to provide a special form of marriage in certain cases, \*\* for the registration of such and certain other marriages and for divorce.

BE it enacted by Parliament as follows:—

**CHAPTER I****PRELIMINARY**

**1. Short title, extent and commencement.**—(1) This Act may be called the Special Marriage Act, 1954.

(2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to citizens of India domiciled in the territories to which this Act extends who are outside the said territories.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2. Interpretation.**—(1) In this Act, unless the context otherwise requires,—

(a) “consular officer” means a consul-general, consul, vice-consul, pro-consul or consular agent;

(b) “diplomatic officer” means an ambassador, envoy, minister, *chargé d’affaires*, high commissioner, commissioner or other diplomatic representative, or a counsellor or secretary of an embassy, legation or high commission;

(c) “district”, in relation to a Marriage Officer, means the area for which he is appointed as such under sub-section (1) or sub-section (2) of section 3;

(d) “district court” means the principal civil court of original jurisdiction, and where there is a city civil court that court;

(e) “prescribed” means prescribed by rules made under this Act;

(f) “degrees of prohibited relationship”—a man and any of the persons mentioned in Part I of the First Schedule and a woman and any of the persons mentioned in Part II of the said Schedule are within the degrees of prohibited relationship;

Explanation I.—Relationship includes,—

(a) relationship by half or uterine blood as well as by full blood;

(b) illegitimate blood relationship as well as legitimate;

(c) relationship by adoption as well as by blood;

and all terms of relationship in this Act shall be construed accordingly;

*Explanation II.*—"Full blood" and "half blood"—two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives.

*Explanation III.*—"Uterine blood"—two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands.

*Explanation IV.*—In explanations II and III, "ancestor" includes the father and "ancestress" the mother.

(g) "State Government", in relation to a Part C State, means the Lieutenant Governor or, as the case may be, the Chief Commissioner of the State.

(2) Subject to the provisions contained in any law for the time being in force relating to guardians and wards, wherever the consent of a guardian is necessary for a marriage under this Act, the only persons entitled to give such consent shall be the father and, after the father, the mother, but the expressions 'father' and 'mother' do not include a step-father and a step-mother.

**3. Marriage Officers.**—(1) For the purposes of this Act, the State Government may, by notification in the Official Gazette, appoint one or more Marriage Officers for the whole or any part of the State.

(2) For the purposes of this Act in its application to citizens of India domiciled in the territories to which this Act extends who are outside the said territories, the Central Government may, by notification in the Official Gazette,—

(a) in the case of the State of Jammu and Kashmir specify such officers of the Central Government as it may think fit to be the Marriage Officers for the State or any part thereof; and

(b) in the case of any other country, place or area, appoint such diplomatic or consular officers as it may think fit to be the Marriage Officers for the country, place or area.

## CHAPTER II

### SOLEMNIZATION OF SPECIAL MARRIAGES

**4. Conditions relating to solemnization of special marriages.**—Notwithstanding anything contained in any other law for the time being

in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:—

- (a) neither party has a spouse living;
- (b) neither party is an idiot or a lunatic;
- (c) the parties have completed the age of eighteen years;
- (d) each party, if he or she has not completed the age of twenty one years, has obtained the consent of his or her \* \* \* guardian to the marriage;
- (e) the parties are not within the degrees of prohibited relationship; and
- (f) where the marriage is solemnized outside the territories to which this Act extends, both parties are citizens of India domiciled in the said territories.

\* \* \* \* \*

**5. Notice of intended marriage.**—When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than fourteen days immediately preceding the date on which such notice is given.

**6. Marriage Notice Book and publication.**—(1) The Marriage Officer shall keep all notices given under section 5 with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same.

(2) The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office.

(3) Where either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under section 5, the Marriage Officer shall also cause a copy of such notice to be transmitted to the Marriage Officer of the district within whose limits such party is permanently residing, and that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office.

**7. Objection to marriage.**—(1) Any person may, before the expiration of thirty days from the date on which any such notice has been published under sub-section (2) of section 6, object to the marriage on the ground that it would contravene one or more of the conditions specified in section 4.

(2) After the expiration of thirty days from the date on which notice of an intended marriage has been published under sub-section

(2) of section 6, the marriage may be solemnized, unless it has been previously objected to under sub-section (1).

(3) The nature of the objection shall be recorded in writing by the Marriage Officer in the Marriage Notice Book, be read over and explained, if necessary, to the person making the objection and shall be signed by him or on his behalf.

**8. Procedure on receipt of objection.**—(1) If an objection is made under section 7 to an intended marriage, the Marriage Officer shall not solemnize the marriage until he has inquired into the matter of the objection and is satisfied that it ought not to prevent the solemnization of the marriage or the objection is withdrawn by the person making it; but the Marriage Officer shall not take more than thirty days from the date of the objection for the purpose of inquiring into the matter of the objection and arriving at a decision.

(2) If the Marriage Officer upholds the objection and refuses to solemnize the marriage, either party to the intended marriage may, within a period of fifteen days from the date of such refusal, prefer an appeal to the district court within the local limits of whose jurisdiction the Marriage Officer has his office, and the Marriage Officer shall act in conformity with the decision of the court.

**9. Powers of Marriage Officers in respect of inquiries.**—(1) For the purpose of any inquiry under section 8, the Marriage Officer shall have all the powers vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) discovery and inspection;
- (c) compelling the production of documents;
- (d) reception of evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses;

and any proceeding before the Marriage Officer shall be deemed to be a judicial proceeding within, the meaning of section 193 of the Indian Penal Code (Act XLV of 1860).

**Explanation.**—For the purpose of enforcing the attendance of any person to give evidence, the local limits of the jurisdiction of the Marriage Officer shall be the local limits of his district.

(2) If it appears to the Marriage Officer that the objection made to an intended marriage is not reasonable and has not been made in good faith he may impose on the person objecting costs by way of compensation not exceeding one thousand rupees and award the whole or any part thereof to the parties to the intended marriage, and any order for costs so made may be executed in the same manner as a decree passed by the district court within the local limits of whose jurisdiction the Marriage Officer has his office.

**10. Procedure on receipt of objection by Marriage Officer abroad.—**

Where an objection is made under section 7 to a Marriage Officer outside the territories to which this Act extends in respect of an intended marriage outside the said territories, and the Marriage Officer, after making such inquiry into the matter as he thinks fit, entertains a doubt in respect thereof, he shall not solemnize the marriage but shall transmit the record with such statement respecting the matter as he thinks fit to the Central Government, and the Central Government, after making such inquiry into the matter and after obtaining such advice as it thinks fit, shall give its decision thereon in writing to the Marriage Officer who shall act in conformity with the decision of the Central Government.

**11. Declaration by parties and witnesses.—**Before the marriage is solemnized the parties and three witnesses shall, in the presence of the Marriage Officer, sign a declaration in the form specified in the Third Schedule to this Act, and if either party has not completed the age of twenty-one years the declaration shall also be signed by his or her \* \* guardian, \* \* \* and in every case the declaration shall be counter-signed by the Marriage Officer:

Provided that where by reason of illness, infirmity, the distance to be travelled, or for any other reason, it is not practicable for the guardian to appear in person before the Marriage Officer for the purpose of signing the declaration, the consent of the guardian may be conveyed to the Marriage Officer by an affidavit sworn before such officer or authority as may be prescribed.

**12. Place and form of solemnization.—**(1) The marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance therefrom as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed.

(2) The marriage may be solemnized in any form which the parties may choose to adopt:

Provided that it shall not be complete and binding on the parties, unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties,—“I, (A), take thee (B), to be my lawful wife (or husband).”

**13. Certificate of marriage.—**(1) When the Marriage has been solemnized, the Marriage Officer shall enter a certificate thereof in the form specified in the Fourth Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses.

(2) On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the Certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with. \* \* \* \* \*

**14. New notice when marriage not solemnized within three months.**—Whenever a marriage is not solemnized within three calendar months from the date on which notice thereof has been given to the Marriage Officer as required by section 5, or, where the record of a case has been transmitted to the Central Government under section 10, within three months from the date of decision of the Central Government, the notice and all other proceedings arising therefrom shall be deemed to have lapsed, and no Marriage Officer shall solemnize the marriage until a new notice has been given in the manner laid down in this Act.

### CHAPTER III

#### REGISTRATION OF MARRIAGES CELEBRATED IN OTHER FORMS

**15. Registration of marriages celebrated in other forms.**—(1) Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (III of 1872), or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:—

(a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;

(b) neither party has at the time of registration more than one spouse living;

(c) neither party is an idiot or a lunatic at the time of registration;

(d) the parties have completed the age of twenty-one years at the time of registration;

(e) the parties are not within the degrees of prohibited relationship, unless the law or any custom or usage having the force of law, governing each of them permits of a marriage between the two; and

(f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

**16. Procedure for registration.**—Upon receipt of an application signed by both the parties to the marriage for the registration of their marriage under this Chapter, the Marriage Officer shall give public notice thereof in such manner as may be prescribed and after allowing a period of thirty days for objections and after hearing any objection received within that period, and shall, if satisfied that all the conditions mentioned in section 15 are fulfilled, enter a certificate of the marriage in the Marriage Certificate Book in the form specified in the Fifth Schedule, and such certificate shall be signed by the parties to the marriage and by three witnesses.

**17. Appeals from orders under section 16.**—Any person aggrieved by any order of a Marriage Officer refusing to register a marriage under this Chapter may, within fifteen days from the date of the order, appeal against that order to the district court within the local limits of whose jurisdiction the Marriage Officer has his office, and the decision of the district court on such appeal shall be final, and the Marriage Officer to whom the application was made shall act in conformity with such decision.

**18. Effect of registration of marriage under this Chapter.**—Where a certificate of marriage has been finally entered in the Marriage Certificate Book under this Chapter, the marriage shall as from the date of such entry, be deemed to be a marriage solemnized under this Act, and all children born after the date of the ceremony of marriage (whose names shall also be entered in the Marriage Certificate Book) shall in all respects be deemed to be and always to have been the legitimate children of their parents.

#### CHAPTER IV

##### CONSEQUENCES OF MARRIAGE UNDER THIS ACT

**19. Effect of marriage on member of undivided family.**—The marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family.

**20. Rights and disabilities not affected by Act.**—Subject to the provisions of section 19, any person whose marriage is solemnized under this Act, shall have the same rights and shall be subject to the same disabilities in regard to the right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850 (XXI of 1850) applies.

\* \* \* \* \*

**21. Succession to property of parties married under Act.**—Notwithstanding any restrictions contained in the Indian Succession Act, 1925 (XXXIX of 1925) with respect to its application to members of certain communities, succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the said Act.

#### CHAPTER V

##### RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

**22. Restitution of conjugal rights.**—When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights, and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

**23. Judicial separation.**—(1) A petition for judicial separation may be presented to the district court either by the husband or the wife,—

(a) on any of the grounds specified in section 26 [other than the grounds specified in clauses (g) and (h) thereof] on which a petition for divorce might have been presented; or

(b) on the ground of failure to comply with a decree for restitution of conjugal rights.

(2) Where the court grants a decree for judicial separation, it shall be no longer obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

## CHAPTER VI

### NULLITY OF MARRIAGE AND DIVORCE

**24. Void marriages.**—(1) Any marriage solemnized under this Act shall be null and void and may be so declared by a decree of nullity if,—

(i) any of the conditions specified in clauses (a), (b), (c) and (e) of section 4 has not been fulfilled; or

(ii) the respondent was impotent at the time of the marriage and at the time of the institution of the suit.

(2) Where a marriage is annulled on the ground that the other party was an idiot or a lunatic or on the ground that at the time of the marriage either party thereto had not completed the age of eighteen years, children begotten before the decree is made shall be specified in the decree, and shall, in all respects, be deemed to be, and always to have been, the legitimate children of their parents.

**25. Voidable marriages.**—(1) Any marriage solemnized under this Act shall be voidable and may be annulled by a decree of nullity if,—

(i) the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or

(ii) the respondent was at the time of the marriage suffering from venereal disease in a communicable form, the disease not having been contracted from the petitioner; or

(iii) the respondent was at the time of the marriage pregnant by some person other than the petitioner; or

(iv) the consent of either party to the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872 (IX of 1872):

Provided that, in the cases specified in clauses (ii) and (iii), the court shall not grant a decree unless it is satisfied,—

(a) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(b) that proceedings were instituted within a year from the date of the marriage; and

(c) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree:

Provided further that in the case specified in clause (iv), the court shall not grant a decree unless it is satisfied that,—

(a) proceedings were instituted within one year after the coercion had ceased or, as the case may be, the fraud had been discovered; or

(b) the petitioner has with his or her free consent lived with the other party to the marriage as husband and wife after the coercion had ceased or, as the case may be, the fraud had been discovered.

(2) Where a decree of nullity is granted in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if it had been dissolved, instead of being annulled, at the date of the decree, shall be deemed to be their legitimate child notwithstanding the annulment.

**26. Divorce.**—Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent—

(a) has since the solemnization of the marriage committed adultery; or

(b) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition; or

(c) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code (Act XLV of 1860):

Provided that divorce shall not be granted on this ground, unless the respondent has prior to the presentation of the petition undergone at least three years' imprisonment out of the said period of seven years; or

(d) has since the solemnization of the marriage treated the petitioner with cruelty; or

(e) has been incurably of unsound mind for a continuous period of not less than five years immediately preceding the presentation of the petition; or

(f) has for a period of not less than five years immediately preceding the presentation of the petition been suffering from leprosy, the disease not having been contracted from the petitioner; or

(g) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive; or

(h) has not resumed cohabitation for a period of two years or upwards after the passing of a decree for judicial separation against the respondent; or

(i) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree against the respondent;

and by the wife on the ground that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.

**27. Restriction on petitions for divorce during first three years after marriage.**—(1) No petition for divorce shall be presented to the district court unless at the date of the presentation of the petition three years have passed since the date of the marriage:

Provided that the district court may, upon application being made to it, allow a petition to be presented before three years have passed on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the district court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the district court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of three years from the date of the marriage or may dismiss the petition, without prejudice to any petition, which may be brought after the expiration of the said three years upon the same, or substantially the same, facts as those proved in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the expiration of three years from the date of the marriage, the district court shall have regard to the interests of any children of the marriage, and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said three years.

**28. Remarriage of divorced persons.**—Where a marriage has been dissolved by a decree of divorce, and either there is no right of appeal against the decree or if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, and one year has elapsed thereafter but not sooner, either party to the marriage may marry again.

## CHAPTER VII

### JURISDICTION AND PROCEDURE

**29. Court to which petition should be made.**—(1) Every petition under Chapter V or Chapter VI shall be presented to the district court within the local limits of whose jurisdiction the marriage was solemnized or the husband and wife reside or last resided together.

(2) Without prejudice to any jurisdiction exercisable by the court under sub-section (1), the district court may, by virtue of this sub-section, entertain a petition by a wife domiciled in the territories to which this Act extends for nullity of marriage or for divorce if she is resident in the said territories and has been ordinarily resident therein for a period of three years immediately preceding the

presentation of the petition and the husband is not resident in the said territories.

**30. Contents and verification of petitions.**—(1) Every petition under Chapter V or Chapter VI shall state, as distinctly as the nature of the case permits, the facts on which the claim to relief is founded, and shall also state that there is no collusion between the petitioner and the other party to the marriage.

(2) The statements contained in every such petition shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may, at the hearing, be referred to as evidence.

**31. Proceedings may be *in camera*.**—A proceeding under this Act shall be conducted *in camera* if either party thereto so desires or if the district court so thinks fit to do.

**32. Duty of court in passing decrees.**—In any proceeding under Chapter V or Chapter VI, whether defended or not, if the court is satisfied that,—

(a) any of the grounds for granting relief exists; and

(b) where the ground of the petition is adultery, the petitioner has not in any manner been accessory to or connived at or condoned the adultery, or, where the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty; and

(c) the petition is not presented or prosecuted in collusion with the respondent; and

(d) there has not been any unnecessary or improper delay in instituting the proceeding; and

(e) there is no other legal ground why the relief should not be granted;

then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

**33. Relief to respondent on petition for divorce.**—If in any proceeding for divorce, the respondent opposes the relief sought on the ground of the petitioner's adultery, cruelty or desertion, the court may give to the respondent the same relief to which he or she would have been entitled if he or she had presented a petition seeking such relief.

**34. Alimony *pendente lite*.**—Where in any proceeding under Chapter V or Chapter VI it appears to the district court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding, and weekly or monthly during the proceeding such sum as, having regard to the husband's income, it may seem to the court to be reasonable.

**35. Permanent alimony and maintenance.**—(1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of

passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property, such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband's property and ability and the conduct of the parties, it may seem to the court to be just.

(2) If the district court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.

(3) If the district court is satisfied that the wife in whose favour an order has been made under this section has remarried or is not leading a chaste life, it shall rescind the order.

**36. Custody of children.**—In any proceeding under Chapter V or Chapter VI the district court may, from time to time, pass such interim orders and make such provisions in the decree as it may seem to it to be just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes wherever possible, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary, from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending.

**37. Enforcement of and appeal from decrees and orders.**—All decrees and orders made by the court in any proceeding under Chapter V or Chapter VI shall be enforced in like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced and may be appealed from under the law for the time being in force:

Provided that every such appeal shall be instituted within a period of ninety days from the date of the decree or order.

**38. Application of Act V of 1908.**—Subject to the other provisions contained in this Act, and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908 (Act V of 1908).

**39. Power of High Court to make rules regulating procedure.**—

(1) The High Court shall, by notification in the Official Gazette, make such rules consistent with the provisions contained in this Act and the Code of Civil Procedure, 1908 (Act V of 1908), as it may consider expedient for the purpose of carrying into effect the provisions of Chapters V, VI and VII.

(2) In particular, and without prejudice to the generality of the foregoing provision, such rules shall provide for,—

(a) the impleading by the petitioner of the adulterer as a co-respondent on a petition for divorce on the ground of adultery, and the circumstances in which the petitioner may be excused from doing so;

- (b) the awarding of damages against any such co-respondent;
- (c) the intervention in any proceeding under Chapter V or Chapter VI by any person not already a party thereto;
- (d) the form and contents of petitions for nullity of marriage or for divorce and the payment of costs incurred by parties to such petitions; and
- (e) any other matter for which no provision or no sufficient provision is made in this Act, and for which provision is made in the Indian Divorce Act, 1869 (IV of 1869).

## CHAPTER VIII

### MISCELLANEOUS

**40. Saving.**—Nothing contained in this Act shall affect the validity of any marriage not solemnized under its provisions; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage.

**41. Penalty on married person marrying again under this Act.**—Save as otherwise provided in Chapter III, every person who, being at the time married, procures a marriage of himself or herself to be solemnized under this Act shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code (Act XLV of 1860), as the case may be, and the marriage so solemnized shall be void.

**42. Punishment of bigamy.**—Every person whose marriage is solemnized under this Act and who, during the lifetime of his or her wife or husband, contracts any other marriage shall be subject to the penalties provided in section 494 and section 495 of the Indian Penal Code (Act XLV of 1860), for the offence of marrying again during the life time of a husband or wife, and the marriage so contracted shall be void.

**43. Penalty for signing false declaration or certificate.**—Every person making, signing or attesting any declaration or certificate required by or under this Act containing a statement which is false and which he either knows or believes to be false or does not believe to be true shall be guilty of the offence described in section 199 of the Indian Penal Code (Act XLV of 1860).

**44. Penalty for wrongful action of Marriage Officer.**—Any Marriage Officer who knowingly and wilfully solemnizes a marriage under this Act—

- (1) without publishing a notice regarding such marriage as required by section 5, or
- (2) within thirty days of the publication of the notice of such marriage, or
- (3) in contravention of any other provision contained in this Act,

shall be punishable with simple imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

**45. Marriage Certificate Book to be open to inspection.**—(1) The Marriage Certificate Book kept under this Act shall at all reasonable times be open for inspection and shall be admissible as evidence of the truth of the statements therein contained.

(2) Certified extracts from the Marriage Certificate Book shall, on application, be given by the Marriage Officer to the applicant on payment by him of the prescribed fee.

**46. Transmission of copies of entries in marriage records.**—Every Marriage Officer in a State shall send to the Registrar-General of Births, Deaths and Marriages of that State at such intervals and in such form as may be prescribed, a true copy of all entries made by him in the Marriage Certificate Book since the last of such intervals, and in the case of Marriage Officers outside the territories to which this Act extends, the true copy shall be sent to such authority, as the Central Government may specify in this behalf.

**47. Correction of errors.**—(1) Any Marriage Officer who discovers any error in the form or substance of any entry in the Marriage Certificate Book may, within one month next after the discovery of such error, in the presence of the persons married or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin without any alteration of the original entry and shall sign the marginal entry and add thereto the date of such correction and the Marriage Officer shall make the like marginal entry in the certificate thereof.

(2) Every correction made under this section shall be attested by the witnesses in whose presence it was made.

(3) Where a copy of any entry has already been sent under section 46 to the Registrar-General or other authority the Marriage Officer shall make and send in like manner a separate certificate of the original erroneous entry and of the marginal corrections therein made.

**48. Power to make rules.**—(1) The Central Government, in the case of diplomatic and consular officers and other officers of the Central Government, and the State Government, in all other cases, may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the duties and powers of Marriage Officers and the areas in which they may exercise jurisdiction;

(b) the manner in which a Marriage Officer may hold inquiries under this Act and the procedure therefor;

(c) the officer or authority before whom an affidavit under section 11 may be sworn;

(d) the form and manner in which any books required by or under this Act shall be maintained;

(e) the fees that may be levied for the performance of any duty imposed upon a Marriage Officer under this Act;

(f) the manner in which public notice shall be given under section 16;

(g) the form in which, and the intervals within which, copies of entries in the Marriage Certificate Book shall be sent in pursuance of section 46;

(h) any other matter which may be or requires to be prescribed.

**49. Repeals and savings.**—(1) The Special Marriage Act, 1872 (III of 1872), and any law corresponding to the Special Marriage Act, 1872, in force in any Part B State immediately before the commencement of this Act are hereby repealed.

(2) Notwithstanding such repeal,—

(a) all marriages duly solemnized under the Special Marriage Act, 1872 (III of 1872), or any such corresponding law shall be deemed to have been solemnized under this Act;

(b) all suits and proceedings in ~~cases~~ causes and matters matrimonial which, when this Act comes into operation, are pending in any court, shall be dealt with and decided by such court, so far as may be, as if they had been originally instituted therein under this Act.

(3) The provisions of sub-section (2) shall be without prejudice to the provisions contained in section 6 of the General Clauses Act, 1897 (X of 1897), which shall also apply to the repeal of the corresponding law as if such corresponding law had been an enactment.

## THE FIRST SCHEDULE

[See section 2(f) 'Degrees of prohibited relationship']

### PART I

*A man cannot marry his—*

1. Mother
2. Father's widow (step-mother)
3. Mother's mother
4. Mother's father's widow (step grand-mother)
5. Mother's mother's mother
6. Mother's mother's father's widow (step great grand-mother)
7. Mother's father's mother

8. Mother's father's father's widow (step great grand-mother)
9. Father's mother
10. Father's father's widow (step grand-mother)
11. Father's mother's mother
12. Father's mother's father's widow (step great grand-mother)
13. Father's father's mother
14. Father's father's father's widow (step great grand-mother)
15. Daughter
16. Son's widow
17. Daughter's daughter
18. Daughter's son's widow
19. Son's daughter
20. Son's son's widow
21. Daughter's daughter's daughter
22. Daughter's daughter's son's widow
23. Daughter's son's daughter
24. Daughter's son's son's widow
25. Son's daughter's daughter
26. Son's daughter's son's widow
27. Son's son's daughter
28. Son's son's son's widow
29. Sister
30. Sister's daughter
31. Brother's daughter
32. Mother's sister
33. Father's sister
34. Father's brother's daughter
35. Father's sister's daughter
36. Mother's sister's daughter
37. Mother's brother's daughter.

*Explanation.*—For the purposes of this Part, the expression “widow” includes a divorced wife.

#### PART II

*A woman cannot marry her—*

1. Father
2. Mother's husband (step-father)
3. Father's father
4. Father's mother's husband (step grand-father)
5. Father's father's father
6. Father's father's mother's husband (step great grand-father)
7. Father's mother's father
8. Father's mother's mother's husband (step great grand-father)

9. Mother's father
10. Mother's mother's husband (step grand-father)
11. Mother's father's father
12. Mother's father's mother's husband (step great grand-father)
13. Mother's mother's father
14. Mother's mother's mother's husband (step great grand-father)
15. Son
16. Daughter's husband
17. Son's son
18. Son's daughter's husband
19. Daughter's son
20. Daughter's daughter's husband
21. Son's son's son
22. Son's son's daughter's husband
23. Son's daughter's son
24. Son's daughter's daughter's husband
25. Daughter's son's son
26. Daughter's son's daughter's husband
27. Daughter's daughter's son
28. Daughter's daughter's daughter's husband
29. Brother
30. Brother's son
31. Sister's son
32. Mother's brother
33. Father's brother
34. Father's brother's son
35. Father's sister's son
36. Mother's sister's son
37. Mother's brother's son.

*Explanation.*—For the purposes of this Part, the expression “husband” includes a divorced husband.

## THE SECOND SCHEDULE

(See section 5)

### NOTICE OF INTENDED MARRIAGE

To

\* \* \* \* \*

Marriage Officer for the.....District.

We hereby give you notice that a marriage under the Special Marriage Act, 1954, is intended to be solemnized between us within three calendar months from the date hereof.

Name	Condition	Occupation	Age	Dwelling Place	Permanent dwelling place if present dwelling place not permanent	Length of residence
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A. B      Unmarried  
            Widower  
            Divorcee

C. D.      Unmarried  
            Widower  
            Divorcee

Witness our hands this.....  
day of.....19 .

(Sd.) A.B.,

(Sd.) C.D.

## THE THIRD SCHEDULE

(See section 11)

### DECLARATION TO BE MADE BY THE BRIDEGROOM

I, A.B., hereby declare as follows:—

1. I am at the present time unmarried (or a widower or a divorcee, as the case may be).
2. I have completed.....years of age.
3. I am not related to C.D. (the bride) within the degrees of prohibited relationship.

*[And when the bridegroom has not completed the age of twenty-one years.]*

4. The consent of my father (or guardian, as the case may be) has been given to a marriage between myself and C.D., and has not been revoked.
5. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and also to fine.

(Sd.) A.B. (the Bridegroom).

#### DECLARATION TO BE MADE BY THE BRIDE

I, C.D., hereby declare as follows:—

1. I am at the present time unmarried (or a widow or a divorcee, as the case may be).
2. I have completed.....years of age.
3. I am not related to A.B. (the bridegroom) within the degrees of prohibited relationship.

*[And when the bride has not completed the age of twenty-one years.]*

4. The consent of my father (or guardian, as the case may be) has been given to a marriage between myself and A.B., and has not been revoked.
5. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and also to fine.

(Sd.) C.D. (the Bride).

Signed in our presence by the above-named A.B. and C.D. So far as we are aware there is no lawful impediment to the marriage.

(Sd.)	G.H.	} Three witnesses.
(Sd.)	I.J.	
(Sd.)	K.L.	

*[And when the bridegroom or bride has not completed the age of twenty-one years and the guardian is present in person.]*

Signed in my presence and with my consent by the above-named A.B. or C.D.

M.N. (the father or guardian  
of the above-named A.B. or  
C.D., as the case may be).

Countersigned E.F.,  
Marriage Officer.

Dated the

day of

19 .

THE FOURTH SCHEDULE

(See section 13)

## CERTIFICATE OF MARRIAGE

I, E.F., hereby certify that on the \_\_\_\_\_ day  
 \*Herein give particulars of the parties, of 19\_\_\_\_, A.B. and C.D.\* appeared before me and that each of them, in my presence and in the presence of three witnesses who have signed hereunder, made the declarations required by section 11 and that a marriage under this Act was solemnized between them in my presence.

(Sd.) E.F.

Marriage Officer for

(Sd.) A.B.,

Bridegroom.

(Sd.) C.D.,

Bride.

(Sd.) G.H. }

(Sd.) I.J. }

(Sd.) K.L. }

Three witnesses.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

THE FIFTH SCHEDULE

(See section 16)

CERTIFICATE OF MARRIAGE CELEBRATED IN OTHER FORMS

I, E.F., hereby certify that A.B. and C.D.\* appeared before me  
 \*Herein give particulars of the parties, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
 and that each of them, in my presence and in the presence of three witnesses who have signed hereunder, have declared that a ceremony of marriage has been performed between them and that they have been living together as husband and wife since the time of their marriage, and that in accordance with their desire to have their marriage registered under this Act, the said marriage has, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, been registered under this Act, having effect as from \_\_\_\_\_.

(Sd.) E.F.

Marriage Officer for

(Sd.) A.B.,

Husband.

(Sd.) C.D.,

Wife.

(Sd.) G.H. }

(Sd.) I.J. }

(Sd.) K.L. }

Three witnesses.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

The following report of the Select Committee on the Bill to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected children and juvenile delinquents in Part C States was presented to the Council of States on the 18th March 1954:—

#### COMPOSITION OF THE SELECT COMMITTEE

Dr. K. L. Shrimali (*Chairman*)  
Shrimati Rukmini Devi Arundale  
Dr. Shrimati Seeta Parmanand  
Shrimati Violet Alva  
Kunwarani Vijaya Raje  
Shri Onkar Nath  
Shri Lavji Lakhamshi Thakkar,  
Shri Jagan Nath Kaushal  
Shri T. R. Deogirikar  
Shri K. M. Rahmath-Ullah  
Moulana Mohd. Faruqi  
Shri Indra Vidyavachaspati  
Shri Shyam Dhar Misra  
Shri Kishori Ram  
Shri H. C. Mathur  
Shri Kishen Chand  
Shri S. N. Mazumdar  
Shri A. Abdul Razak  
Shri Amolakh Chand  
Shri K. D. Malaviya  
Maulana Abul Kalam Azad.

#### REPORT OF THE SELECT COMMITTEE

The Select Committee to which the \*Bill to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected children and juvenile delinquents in Part C States was referred, have considered the Bill and now submit this their Report, with the Bill as amended by the Committee annexed thereto.

Upon the changes proposed in the Bill which are not formal or consequential, the Select Committee note as follows:—

*Clause 1.*—The Committee do not consider it necessary to empower any State Government to exempt any class of children from the operation of this Act and the proviso to sub-clause (3) has accordingly been omitted.

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\* The Bill was published in Part II, Section 2 of the *Gazette of India, Extraordinary*, dated the 14th September, 1953.

Other changes in this clause are merely of a drafting nature.

*Clause 2.*—In clause 2(c), the word “separate” has been omitted, as being unnecessary.

The Committee consider that in the definition of “neglected child” in clause 2(h) (1) the words “offering anything for sale” may create complications and they have been omitted.

*Clause 5.*—In clause 5(3), slight drafting changes have only been made.

*Clause 7.*—The Committee consider that for the sake of clarity, the children’s homes and special schools should be separately dealt with. They realise that there are certain functions which are necessarily common to both the institutions. It is, however, considered necessary to bring out clearly that while a children’s home should try to protect children from moral dangers and exploitation, a special school should try to reform the character of the child. For clause 7, two new clauses have been substituted. Clause 7 deals with children’s homes while clause 8 deals with special schools. While the functions of these institutions will be regulated by rules, indication has been given in the Bill as to the nature of their functions

Subsequent clauses have been re-numbered.

*Re-numbered clause 11 (original clause 10).*—The Committee feel that it would not be proper to use any such expression as “taking into custody” in respect of a neglected child and the Committee have, therefore, substituted such expression by the words “taking charge of”.

When information is given to a police officer about a neglected child and the police officer does not propose to take any action thereon, the Committee consider that, in such a case, he should send a copy of the entry made by him to the competent court so that the competent court may take such action on the information as it deems proper. Sub-clause (2) of clause 11 has accordingly been amended.

When a neglected child is taken charge of either by a police officer or by an authorised person, the child should not be kept either in a police station or in a jail. He should be kept in an observation home, pending his production before a competent court, unless he is allowed to remain with his parents or guardians. A new sub-clause (4) has accordingly been inserted.

*Re-numbered clause 13 (original clause 12).*—A new sub-clause (3) has been inserted to provide that during the pendency of any inquiry regarding a child, he should be kept in an observation home.

*Re-numbered clause 15 (original clause 14).*—The existing clause covers only the case of children who cannot be controlled by their parents. There are parents who, for various reasons, cannot take proper care of their children. The Committee consider that such classes of children should also be covered by this clause. The clause has accordingly been amended.

*Re-numbered clause 16 (original clause 15).*—The Committee have made slight drafting changes to make the intention clear.

*Re-numbered clause 19 (original clause 18).*—The Committee consider that in clause 19(1) (d) the words “the offence committed by him is punishable with fine and” should be omitted.

The Committee further consider that the period for which a child should be placed under supervision should be specifically stated in the order of the competent court. Clause 19(2) has accordingly been amended.

*Re-numbered clause 20 (original clause 19).*—It is an accepted principle that a child should not be sent to prison for having committed an offence. The existing clause, however, makes an exception under certain circumstances in the case of a child who has attained the age of fourteen years. The Committee consider that under no circumstances should a child be sent to a jail. The proviso to clause 20(1) and clause 20(2) have accordingly been re-drafted.

*Original clause 21.*—This clause is considered unnecessary and has been omitted.

*Clause 25.*—The Committee have made certain drafting changes to make the intention clear.

*Clause 26.*—The Committee have slightly amended clause 26(2) to make it clear that the competent court should have powers to remove, if necessary, the police officers also from the court room, when an inquiry is being held regarding a child.

*Clause 28.*—The Committee consider that the proviso to clause 28 is unnecessary and hence it has been omitted.

*Clause 31.*—The Committee consider that when a child is sent to his ordinary place of residence outside the jurisdiction of the competent court which passed the order, he should be kept under the control of some authority. The Committee suggest that the competent court which exercises jurisdiction over the place to which the child is sent should have the same powers in relation to the child as if the original order had been passed by itself. Clause 31 has accordingly been amended.

*Clause 33.*—The Committee have made slight drafting changes in the proviso to clause 33(1).

*Clauses 34 and 35.*—The Committee are of opinion that there should be no appeal against acquittal under any circumstances. They are also of the view that there should be no second appeal in any case and the decision of the court of session passed in appeal should be final.

For sub-clause (2) of clause 34, two new sub-clauses (2) and (3) have been substituted and sub-clause (1) of clause 35 has been omitted.

*Clause 36.*—The Committee are of opinion that a competent court, while holding any inquiry under this Act, should record the evidence placed before it and that the procedure laid down in the Code of Criminal Procedure for summary trials is rather inadequate for the purpose. They suggest that the competent court should follow the procedure laid down in the Code of Criminal Procedure for trials in summons cases. Clause 36(1) has accordingly been amended.

*Clause 40.*—The Committee feel that when a child is placed on a licence, every attempt should be made to give him proper education and in order to bring out this idea clearly, clause 40(1) has been slightly amended.

*Clause 52.*—The Committee consider that while making rules, the State Government should prescribe the qualifications of probation officers and also provide for the recruitment and training of persons performing functions under this Act. In clause 52(2), items (h) and (i) have accordingly been amended.

2. The Select Committee recommend that the Bill be passed as now amended.

K. L. SHRIMALI,

*Chairman of the Select Committee.*

NEW DELHI;

*The 15th March, 1954.*

### MINUTES OF DISSENT

#### I

Though I agree with the aim and purpose of the Bill which seek to adjust mal-adjusted children and afford facilities to destitute and neglected children by giving them educational, social and other opportunities, still I have to write a minute of dissent due to some pronounced defects in the Bill. The difference of opinion about these features of the Bill is due also to the fundamental difference as regards the very approach to the problem of neglected children and child delinquents.

The Bill in my opinion does not take into account the socio-economic background of the problem. The failure to take that into account has resulted in the Bill treating the problem in a more or less legalistic manner and is mostly concerned with the setting up of children's courts, special schools and observation homes, etc.

Secondly the problems of neglected and destitute children and that of child delinquency have been treated almost on a par with one another and that too in an over simplified and legalistic manner. There is no specialised approach to the problem.

The Bill has been largely based on the model Bill drafted by the Expert Committee. But that draft itself is not of much help as the Committee has not given any idea as to the nature, magnitude, causes and remedies of the problem. The present Bill does not in any way attempt to go beyond the four corners of the model drafted by the Committee.

As a result of these defects the very purpose of the Bill may be defeated to a large extent. Moreover some of the provisions are such as to act as the cause of hardship to some children and their parents.

Due to the above defects in the Bill it has not been possible for me to suggest suitable amendments to some clauses but I feel it my duty to point out the defects in those provisions.

*Clause 2(g).*—The definition of a juvenile delinquent—in my opinion a child should be considered as such only if it has shown some persistent tendency of committing offences. The definition as

it stands is liable to ruin the career of many a child than of helping them to reform.

*Clause 2(h)(i).*—The definition as it stands means that a child leading its blind or lame parent is liable to be taken into custody. Without taking proper steps to rehabilitate the infirm beggars if the child is taken away it will amount to a punitive measure on both.

*Clause 2(h)(iii).*—The same can be said of this sub-clause. Due to economic inabilities it is difficult for many a parent to fulfil the conditions of this sub-clause. Any attempt to do good to the child without tackling the problem of the parents will defeat the very purpose. That is why I suggest that this sub-clause should be substituted by the following:—

“has a parent or guardian who utilise the child for earning in a manner which affects the child morally or physically or who express their inability to exercise proper care or control over the child”.

*Clause 10.*—(1) Instead of taking charge at once enquiries should be made as regards the parent or guardian of the child.

Provided that in cases coming under clause 2(h)(iv) charge of the child will be at once taken over by the officer.

*Clause 52.*—Some of the defects in the Bill could be remedied by providing elaborate instructions under this clause. Here the power to make rules has been left to the States and only the heads on which the States can do so have been mentioned. As this is supposed to be a model Bill so elaborate guidance on this subject would have been quite justified.

SATYENDRA NARAYAN MAZUMDAR.

NEW DELHI;

March 17, 1954.

## II

Though I would have liked to widen the scope of the Bill by the insertion of a broader definition of “a neglected child” and by providing one or two clauses which would make it compulsory for all children’s private orphanages in the country to obtain a licence or “a certificate” for running these and thus making them subject to Government supervision the Committee did not think it could accommodate these provisions and felt that a separate Bill for the purpose would be more suitable. In my opinion such provisions would not only have made a new Bill unnecessary but would have provided private institutions for the care of “neglected children” under the Act and thus relieved Government of the burden of providing many such institutions forthwith. The main difficulty in the way of Governments in giving effect to the Act when passed would be the lack of finances required for the establishment of children’s Homes. Licensing of all existing private orphanages and prohibiting the running of unlicensed ones would have served a double purpose and fulfilled the real object of this model Bill. It would be necessary for me to proceed with the Bill in my name, which even Government had hoped may not be necessary after this Bill became an Act. I had to make these facts clear. In fact this is not a regular Minute

of dissent as I agree with the Committee on the other clauses in general.

SEETA PARMANAND.

NEW DELHI;  
The 16th March, 1954.

### III

(1) Those who have studied the working of a Child's mind will agree that a child normally responds to a careful and sympathetic handling, and, since some of the cause that upset the child arise out of his socio-economic condition or tactless handling at home or school or persistent friction between parents to which he is a shocked and silent witness or adverse influence of others on him by which he becomes an easy instrument to commit or abet in criminal acts or any other which turns him into little angel with a dirty mind it would be very harsh to dub every child a delinquent.

I am therefore not in favour of the term "juvenile delinquent"; the word "delinquent" suggests a hardened and habitual conduct, and such cases would be few and far between even in a country where the mass of children do not get a fair deal. Delinquency is a grandiose word and should not be used too frequently to describe what may only be childish pranks. Every juvenile delinquent is a juvenile offender but in my opinion every juvenile offender is not a juvenile delinquent and therefore "young offender" should be substituted for "juvenile delinquent" in clause 2 (g).

(2) One entire category of children has been altogether left out and unprovided for viz. "victimised children" i.e. (juvenile victims of unnatural offences, cruelty, rape, assault etc.), and unless provision is made for this class of children it will be hard for the children's courts or competent courts to be established under this measure to pass any interim or final order for the committal, supervision, repatriation of or search for a "victimised child" who as in clause 2(g) is neither a juvenile delinquent nor as in clause 2(b) a neglected child.

VIOLET ALVA.

NEW DELHI;  
The 17th March, 1954.

## THE CHILDREN BILL, 1953

[AS AMENDED BY THE SELECT COMMITTEE]

(Words underlined or sidelined indicate the amendments suggested by the Committee; asterisks indicate omissions.)

### Bill No. XXIII of 1953.

A Bill to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected children and juvenile delinquents in Part C States.

BE it enacted by Parliament as follows:—

#### CHAPTER I

#### PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Children Act, 1954.

(2) It extends to all the Part C States.

(3) This section shall come into force at once; and the State Government may, by notification in the Official Gazette, direct that all or any of the other provisions of this Act \* \* \* specified in the notification shall come into force in the whole of the State or any area thereof on such date as it may by the notification appoint and different dates may be appointed for different provisions of this Act and for different areas within the State.

\* \* \* \* \*

**2. Definitions.**—In this Act, unless the context otherwise requires,—

(a) “adult” means a person who is not a child;

(b) “child” means a person who has not attained the age of sixteen years;

(c) “children’s court” means a \* court established under section 4;

(d) “children’s home” means an institution established or certified by the State Government under section 7 for the reception and protection of neglected children;

(e) “competent court” means a children’s court, and where such a court has not been constituted, includes any court empowered by sub-section (2) of section 5 to exercise the powers conferred on a children’s court;

(f) “guardian” in relation to a child, includes any person who, in the opinion of the court having cognizance of any proceeding in relation to a child, has for the time being the actual charge of, or control over, that child;

(g) “juvenile delinquent” means a child who has been found to have committed an offence other than an offence punishable with death or transportation for life;

(h) “neglected child” means a child who—

(i) is found in any street or place of public resort begging or receiving alms, or for the purpose of so begging or receiving alms, whether or not there is any pretence of singing, playing, performing, \* \* \* or otherwise; or

(ii) is found without having any home or settled place of abode or any ostensible means of subsistence or is found destitute, whether he is an orphan or not; or

(iii) has a parent or guardian who is unfit to exercise or does not exercise proper care and control over the child; or

(iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life;

(i) “observation home” means any institution or place established or recognised by the State Government under section 9 for the temporary reception of a child during the pendency of an inquiry regarding him;

(j) "offence" means an offence punishable under any law for the time being in force with imprisonment or fine or with both but does not include an offence punishable with death or transportation for life;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "probation officer" means an officer appointed as a probation officer under this Act;

(m) "special school" means an institution established or certified by the State Government under section 8 for the reception and training of juvenile delinquents;

(n) "State Government", in relation to a Part C State, means the Lieutenant-Governor or, as the case may be, the Chief Commissioner;

(o) "supervision", in relation to a child placed under the care of any parent, guardian or other fit person under this Act, means the supervision of that child by a probation officer for the purpose of ensuring that the child is properly looked after and that the conditions imposed by the competent court are complied with;

(p) all words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1898 (Act V of 1898) shall have the meanings assigned to them in that Code.

**3. Continuation of inquiry in respect of a child on his attaining sixteen years.**—For the purposes of this Act, a person shall be deemed to be a child if he has not attained the age of sixteen years at the time of the initiation of any inquiry regarding him under this Act or at the time of his arrest in connection with which an inquiry is initiated regarding him under this Act:

Provided that if during the course of such inquiry, such person attains the age of sixteen years, the inquiry already commenced shall be continued and orders may be made in respect of such person under this Act as if such person was a child, notwithstanding anything to the contrary contained in this Act.

## CHAPTER II

### COMPETENT COURTS AND CERTAIN INSTITUTIONS UNDER THE ACT

**4. Children's Courts.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the State Government may, by notification in the Official Gazette, constitute for any area specified in the notification, one or more children's courts for holding inquiries regarding neglected children and juvenile delinquents under this Act.

(2) A children's court shall be presided over by a magistrate or a Bench consisting of two or more magistrates as the State Government thinks fit to appoint, and where a Bench is so constituted, one of the magistrates shall be designated as the senior magistrate and one of them shall, as far as practicable, be a woman.

(3) In the event of any difference of opinion among the magistrates constituting a Bench, the opinion of the majority shall prevail, but

where there is no such majority, the opinion of the senior magistrate shall prevail.

(4) A children's court, where it is presided over by a Bench of magistrates, may act notwithstanding the absence of any of the magistrates, and no order made by the Bench shall be invalid by reason only of the absence of any of the magistrates during any stage of the hearing of the proceeding.

(5) No person shall be appointed to preside over a children's court unless he is a magistrate of the first class and has, in the opinion of the State Government, special knowledge of juvenile delinquency and child welfare.

**5. Powers of children's court and other courts.**—(1) Where a children's court has been constituted for any area, such court shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings relating to neglected children and juvenile delinquents under this Act.

(2) Where no children's court has been constituted for any area, the powers conferred on the children's court by or under this Act shall be exercised in that area, only by the following, namely:—

- (a) the district magistrate; or
- (b) the sub-divisional magistrate; or
- (c) any salaried magistrate of the first class.

(3) The powers conferred on the children's court by or under this Act may also be exercised by the High Court and the court of session, when the proceeding comes before them in appeal, revision or otherwise.

**6. Procedure to be followed by a magistrate not empowered under this Act.**—(1) When any magistrate not empowered to exercise the powers of a children's court under this Act is of opinion that a person brought before him under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a child, he shall record such opinion and forward the child and the record of the proceeding to the competent court having jurisdiction over the proceeding.

(2) The competent court to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the child had originally been brought before it.

**7. Children's homes.**—(1) The State Government may establish and maintain as many children's homes as may be necessary for the reception of neglected children to be sent there under this Act.

(2) Where the State Government is of opinion that any institution other than an institution established under sub-section (1) is fit for the reception of the neglected children to be sent there under this Act, the State Government may certify such institution as a children's home for the purposes of this Act.

(3) Every children's home to which a neglected child is sent under this Act shall not only provide the child with accommodation and maintenance but also endeavour to provide him with facilities for education and for developing his character and abilities and to give

him necessary training for protecting himself against moral dangers or exploitation and shall also perform such other functions as may be prescribed.

(4) The State Government may, by rules made under this Act, provide for the management of children's homes and the circumstances under which, and the manner in which, the certificate of a children's home may be withdrawn.

**8. Special schools.**—(1) The State Government may establish and maintain as many special schools as may be necessary for the reception of juvenile delinquents to be sent there under this Act.

(2) Where the State Government is of opinion that any institution other than an institution established under sub-section (1) is fit for the reception of juvenile delinquents to be sent there under this Act, the State Government may certify such institution as a special school for the purposes of this Act.

(3) Every special school to which a juvenile delinquent is sent under this Act shall not only provide the child with accommodation and maintenance but also endeavour to provide him with facilities for education and for developing his character and abilities and to give him necessary training for his reformation and shall also perform such other functions as may be prescribed.

(4) The State Government may, by rules made under this Act, provide for the management of special schools and the circumstances under which, and the manner in which, the certificate of a special school may be withdrawn.

**9. Observation homes.**—(1) The State Government may establish and maintain as many observation homes as may be necessary for the temporary reception of children during the pendency of any inquiry regarding them under this Act and such observation homes shall be maintained in such manner as may be prescribed.

(2) Where the State Government is of opinion that any institution other than an institution established under sub-section (1) is fit for the temporary reception of children during the pendency of any inquiry regarding them under this Act, the State Government may recognise such institution as an observation home for the purposes of this Act.

**10. After-care organisations.**—(1) The State Government may, by rules made under this Act, provide for the establishment or recognition of after-care organisations and may vest them with such powers as may be necessary for effectively carrying out their functions under this Act.

(2) Every such organisation shall take care of the children when they leave children's homes or special schools and shall, for the purpose of enabling them to lead an honest, industrious and useful life, take all such measures as it may deem necessary or as may be prescribed.

### CHAPTER III

#### NEGLECTED CHILDREN

**11. Production of neglected children before competent courts.**—

(1) Any police officer or other person authorised by the State Government in this behalf may, if he is of opinion that a person apparently

under the age of sixteen years is a neglected child, take charge of that person \* \* for bringing him before a competent court.

(2) When information is given to an officer-in-charge of a police station about any neglected child found within the limits of such station, he shall enter in a book to be kept for the purpose the substance of such information and take such action thereon as he deems fit and if such officer does not propose to take charge of the child, he shall forward a copy of the entry made to the competent court.

(3) Every child taken charge of under sub-section (1) shall be brought before the competent court within a period of twenty-four hours of such charge taken excluding the time necessary for the journey from the place where the child had been taken charge of to the competent court.

(4) Every child taken charge of under sub-section (1) shall, unless he is kept with his parent or guardian, be sent to an observation home (but not to a police station or jail) until he can be brought before a competent court.

**12. Special procedure to be followed when the neglected child has parent.**—(1) If a person, who in the opinion of the police officer or the authorised person is a neglected child, has a parent or guardian who has the actual charge of, or control over, the child, the police officer or the authorised person may, instead of taking charge of the child, \* \* make a report to the competent court for initiating an inquiry regarding that child.

(2) On receipt of a report under sub-section (1), the competent court may call upon the parent or guardian to produce the child before it and to show cause why the child should not be dealt with as a neglected child under the provisions of this Act and if it appears to the competent court that the child is likely to be removed from its jurisdiction or to be concealed, it may immediately order his removal (if necessary by issuing a search warrant for the immediate production of the child) to an observation home.

**13. Inquiry by competent court regarding neglected children.**—(1) When a person alleged to be a neglected child is produced before a competent court, it shall examine the police officer or the authorised person who brought the child or made the report and record the substance of such examination and hold the inquiry in the prescribed manner and may make such orders in relation to the child as it may deem fit.

(2) Where a competent court is satisfied on inquiry that the child is a neglected child and that it is expedient so to deal with him, the competent court may make an order directing the child to be sent to a children's home for being kept there until he attains the age of sixteen years:

Provided that the competent court may, for reasons to be recorded, extend the period of such stay, but in no case the period of stay shall extend beyond the time when the child attains the age of eighteen years.

(3) During the pendency of any inquiry regarding a child, the child shall, unless he is kept with his parent or guardian, be sent to an observation home for such period as may be specified in the order of the competent court.

**14. Power to commit neglected child to suitable custody.**—(1) If the competent court so thinks fit, it may, instead of making an order for sending the child to a children's home, make an order placing the child under the care of a parent, guardian or other fit person, on such parent, guardian or fit person executing a bond with or without surety to be responsible for the good behaviour and well-being of the child and for the observance of such conditions as the competent court may think fit to impose.

(2) At the time of making an order under sub-section (1) or at any time subsequently, the competent court may, in addition, make an order that the child be placed under supervision for any period not exceeding three years in the first instance.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), if at any time, it appears to the competent court on receiving a report from the probation officer or otherwise, that there has been a breach of any of the conditions imposed by it in respect of the child, it may, after making such inquiry as it deems fit, order the child to be sent to a children's home.

**15. Uncontrollable children.**—Where a parent or guardian of a child complains to the competent court that he is not able to exercise proper care and control over the child and the competent court is satisfied on inquiry that proceedings under this Act should be initiated regarding the child, it may send the child to an observation home and make such further inquiry as it may deem fit and the provisions of section 13 and section 14 shall, as far as may be, apply to such proceedings.

## CHAPTER IV

### JUVENILE DELINQUENTS

**16. Bail and custody of children.**—(1) When any person accused of a bailable or non-bailable offence and apparently under the age of sixteen years is arrested or detained \* \* \* \* or appears or is brought before a competent court, such person shall be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any reputed criminal or expose him to moral danger or that his release would defeat the ends of justice.

(2) When such a person having been arrested is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause him to be kept in an observation home in the prescribed manner (but not in a police station or jail) until he can be brought before a competent court.

(3) When such a person is not released on bail under sub-section (1) by the competent court, it shall, instead of committing him to prison, send him to an observation home for such period during the pendency of the inquiry regarding him as may be specified in the order.

**17. Information to parent or guardian or probation officer.**—Where a child is arrested, the officer-in-charge of the police station to which the child is brought shall, as soon as may be after the arrest, inform—

(a) the parent or guardian of the child, if he can be found, of such arrest and direct him to be present at the competent court before which the child will appear; and

(b) the probation officer of such arrest in order to enable him to obtain information regarding the antecedents and family history of the child and other material circumstances likely to be of assistance to the competent court for making the inquiry.

**18. Inquiry by competent court regarding juvenile delinquents.**—Where a child having been charged with an offence appears or is produced before a competent court, the competent court shall hold the inquiry in accordance with the provisions of section 36 and may, subject to the provisions of this Act, make such order in relation to the child as it deems fit.

**19. Orders that may be passed regarding juvenile delinquents.**—(1) Where a competent court is satisfied on inquiry that a child has committed an offence, then, notwithstanding anything to the contrary contained in any law for the time being in force, the competent court may, if it so thinks fit,—

(a) make an order directing the child to be sent to a special school for such period of stay as it may consider necessary for the proper training of the child:

Provided that in no case the period of stay shall extend beyond the time when the child attains the age of eighteen years;

(b) allow the child to go home after advice or admonition;

(c) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person on such parent, guardian or fit person executing a bond, with or without surety as the competent court may require, for the good behaviour and well-being of the juvenile delinquent for any period not exceeding three years;

(d) order the child to pay a fine, if \* \* \* \* he is over the age of fourteen years and earns money.

(2) Where the competent court makes an order under clause (b) or clause (c) or clause (d) of sub-section (1), it may, in addition, make an order that the juvenile delinquent be placed under supervision for such period, not exceeding three years, as it thinks fit:

Provided that if at any time afterwards it appears to the competent court on receiving a report from the probation officer or otherwise, that the juvenile delinquent has not been of good behaviour during the period of supervision, it may, after making such inquiry as it deems fit, order the juvenile delinquent to be sent to a special school.

**20. Orders that may not be passed against juvenile delinquents.**—(1) Notwithstanding anything to the contrary contained in any law for the time being in force, no juvenile delinquent shall be sentenced

to imprisonment or committed to prison in default of payment of fine or in default of furnishing security:

Provided that where a child who has attained the age of fourteen years has committed an offence and the competent court is satisfied that the offence committed is of so serious a nature or that his conduct and behaviour has been such that it would not be in his interest or in the interest of other children in a special school to send him to such special school and that none of the other measures provided for under this Act is suitable or sufficient, the competent court may order the juvenile delinquent to be kept in safe custody in such place and manner as it thinks fit and shall report the case for the orders of the State Government.

(2) On receipt of a report from a competent court under sub-section (1), the State Government may make such arrangement in respect of the child as it deems proper and may order such juvenile delinquent to be detained at such place and on such conditions as it thinks fit:

Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the child could have been sentenced for the offence committed.

**21. Power to order parent to pay fine, etc.—**(1) Where the offence committed is punishable with fine and the juvenile delinquent is under fourteen years of age, the competent court shall order that the fine be paid by the parent or guardian of the child, unless the competent court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child.

(2) An order under this section may be made against a parent or guardian who, having been required to attend has failed to do so, but save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(3) Any order directing that a parent or guardian shall pay fine under this section may be enforced as though it were an order passed under the Code of Criminal Procedure, 1898 (Act V of 1898).

\* \* \* \* \*

**22. No proceeding under Chapter VIII of the Criminal Procedure Code against the child.**—Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1898 (Act V of 1898), no proceeding shall be instituted and no order shall be passed against a child under Chapter VIII of the said Code.

**23. No joint trial of child and adult.**—(1) Notwithstanding anything contained in section 239 of the Code of Criminal Procedure, 1898 (Act V of 1898), or any other law for the time being in force, no child shall be charged with, or tried for, any offence together with an adult.

(2) If a child is accused of an offence for which under section 239 of the Code of Criminal Procedure, 1898, or any other law for the time being in force, such child and an adult would, but for the prohibition contained in sub-section (1), have been charged and tried

together, the court, taking cognizance of that offence shall direct separate trials of the child and the adult.

**24. Special provision in respect of pending cases.**—Notwithstanding anything contained in this Act, all proceedings in respect of a child pending in any court in any area on the date on which this Chapter comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court of trial finds that the child has committed an offence, it shall record such finding and, instead of passing any sentence in respect of the child, forward the child to the competent court which shall pass orders in respect of that child in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that the child has committed the offence.

## CHAPTER V

### CERTAIN POWERS AND FUNCTIONS OF COMPETENT COURTS AND APPEALS AND REVISION FROM ORDERS OF SUCH COURTS

**25. Sittings, etc., of children's courts.**—(1) A children's court shall hold its sittings at such place, on such day and in such manner, as may be prescribed.

(2) A magistrate empowered to exercise the powers of a children's court under sub-section (2) of section 5 shall, while holding any inquiry regarding a child under this Act, as far as practicable, sit in a building or room different from that in which the ordinary sittings of civil and criminal courts are held, or on different days or at times different from those at which the ordinary sittings of such courts are held.

**26. Presence of persons in children's court.**—(1) Save as provided in this Act, no person shall be present at any sitting of a competent court, except—

- (a) the officers of the competent court, or
- (b) the parties to the inquiry before the competent court, the parent or guardian of the child and other persons directly concerned in the inquiry including police officers, and
- (c) such other persons as the competent court may permit to be present.

(2) Notwithstanding anything contained in sub-section (1), if at any stage during an inquiry, a competent court considers it to be expedient in the interest of the child or on grounds of decency or morality that any person including the police officers, the parent, guardian or the child himself should withdraw, the competent court may give such direction, and if any person refuses to comply with such direction, the competent court may have him removed and may, for this purpose, cause to be used such force as may be necessary.

**27. Dispensing with attendance of child.**—If at any stage during the course of an inquiry, a competent court is satisfied that the attendance of the child is not essential for the purpose of the inquiry, the competent court may dispense with his attendance and proceed with the inquiry in the absence of the child.

**28. Attendance of parent or guardian of the child.**—Any competent court before which a child is brought under any of the provisions of this Act may, whenever it so thinks fit, require any parent or guardian having the actual charge of, or control over, the child to be present at any proceeding in respect of the child.

\* \* \* \* \*

**29. Presumption and determination of age.**—(1) Wherever any person is brought before any competent court under any of the provisions of this Act (otherwise than for the purpose of giving evidence) and it appears to the competent court that he is a child, the competent court shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be forthcoming and shall record a finding whether the person is a child or not, stating his age as nearly as may be.

(2) No order of a competent court shall be invalidated merely by any subsequent proof that the person in respect of whom the order has been made is not a child, and the age presumed or declared by the competent court to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person.

**30. Circumstances to be taken into consideration in making orders under this Act.**—For the purpose of making any order in respect of a child under this Act, a competent court shall have regard to the following circumstances, namely:—

- (a) the age of the child;
- (b) the circumstances in which the child is living;
- (c) the reports made by the probation officer;
- (d) the religious persuasion of the child;
- (e) such other circumstances as may, in the opinion of the competent court, require to be taken into consideration in the interests of the child:

Provided that in the case of a juvenile delinquent, the above circumstances shall be taken into consideration after the competent court has recorded a finding against the child that he has committed the offence.

**31. Sending a child outside jurisdiction.**—In the case of a neglected child or juvenile delinquent whose ordinary place of residence lies outside the jurisdiction of the competent court before which he is brought, the competent court may, if satisfied after due inquiry that it is expedient so to do, send the neglected child or juvenile delinquent back to a relative or other person who is fit and willing to receive him at his ordinary place of residence and exercise proper care and control over him, notwithstanding that such place of residence is outside the jurisdiction of the competent court; and the competent court exercising jurisdiction over the place to which the child is sent shall have the same powers in relation to the child as if the original order had been passed by itself.

**32. Reports to be treated confidential.**—The report of the probation officer or any other report considered by the competent court under section 30 shall be treated as confidential:

Provided that if such report relates to the character, health or conduct of, or the circumstances in which, the child or parent is living, the competent court may, if it thinks it expedient, communicate the substance thereof to the child or parent concerned, as the case may be, and may give the child or parent an opportunity to produce such evidence as may be relevant to the matter stated in the report.

**33. Prohibition of publication of names, etc., of children involved in any proceeding under this Act.**—(1) No report in any newspaper, magazine or news sheet of any inquiry regarding a child under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the child, nor shall any picture of any such child be published:

Provided that for reasons to be recorded in writing, the court holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the child. \* \* \* \*

(2) Any person contravening the provisions of sub-section (1) shall be punishable with fine which may extend to one thousand rupees.

**34. Appeals.**—(1) Subject to the provisions of this section, any person aggrieved by an order made by a competent court under this Act may, within thirty days from the date of such order, prefer an appeal to the court of session:

Provided that the court of session may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) No appeal shall lie from—

(a) any order of acquittal made by the competent court in respect of a child alleged to have committed an offence; or

(b) any order made by a competent court in respect of a person finding that he is not a neglected child.

(3) No second appeal shall lie from any order of the court of session passed in appeal under this section.

**35. 1 \* \* \* Revision.**— \* \* \* \* \* The High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding in which any competent court or court of session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:

Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

**36. Procedure to apply to inquiries, appeals and revision proceedings.**—(1) Save as otherwise expressly provided by this Act, a competent court, while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure

laid down in the Code of Criminal Procedure, 1898 (Act V of 1898) for \* trials in summons cases. \* \* \*

(2) Save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals or revision proceedings under this Act shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1898.

**37. Power to amend orders.**—(1) Without prejudice to the provisions for appeal and revision under this Act, any competent court may, either on its own motion or on an application received in this behalf, amend any order as to the institution to which a child is to be sent or as to the person under whose care or supervision a child is to be placed under this Act.

(2) Clerical mistakes in orders passed by a competent court or errors arising therein from any accidental slip or omission may, at any time, be corrected by the competent court either on its own motion or on an application received in this behalf.

## CHAPTER VI

### MISCELLANEOUS

**38. Power of State Government to discharge and transfer children.**—(1) The State Government may, at any time, order a neglected child or a juvenile delinquent to be discharged from the children's home or special school, either absolutely or on such conditions as the State Government may think fit to impose.

(2) The State Government may order—

(a) a neglected child to be transferred from one children's home to another;

(b) a juvenile delinquent to be transferred from one special school to another or from a special school to a borstal school where such school exists or from a special school to a children's home;

(c) a child who has been released on licence, which has been revoked or forfeited, to be sent to the special school or children's home from which he was released or to any other children's home or special school:

Provided that the total period of the stay of the child in a children's home or a special school shall not be increased by such transfer.

(3) The State Government may, at any time, discharge a child from the care of any person under whom he was placed under this Act either absolutely or on such conditions as the State Government may think fit to impose.

**39. Transfer of children of unsound mind or suffering from leprosy.**—(1) Where it appears to the State Government that any child kept in a special school or children's home in pursuance of this Act is a leper or of unsound mind, the State Government may order his removal to a leper asylum or mental hospital or other place of safe custody for being kept there for the remainder of the term for which he has to be kept in custody under the orders of

the competent court or for such further period as may be certified by a medical officer to be necessary for the proper treatment of the child.

(2) Where it appears to the State Government that the child is cured of leprosy or of unsoundness of mind, the State Government may, if the child is still liable to be kept in custody, order the person having charge of the child to send him to the special school or children's home from which he was removed or, if the child is no longer liable to be kept in custody, order him to be discharged.

**40. Placing out on licence.**—(1) When a child is kept in a children's home or special school, the State Government may, if it so thinks fit, release the child from the children's home or special school and grant him a written licence for such period and on such conditions as may be specified in the licence permitting him to live with, or under the supervision of, any responsible person named in the licence willing to receive and take charge of him with a view to educate him and train him for some useful trade or calling.

(2) Any licence so granted shall be in force for the period specified in the licence or until revoked or forfeited by the breach of any of the conditions on which it was granted.

(3) The State Government may, at any time, by order in writing revoke any such licence and order the child to return to the special school or children's home from which he was released or to any other children's home or special school, and shall do so at the desire of the person to whom the child is licensed.

(4) When a licence has been revoked or forfeited and the child refuses or fails to return to the special school or children's home to which he was directed so to return, the State Government may, if necessary, cause him to be taken charge of and may cause him to be taken back to the special school or children's home.

(5) The time during which a child is absent from a special school or children's home in pursuance of a licence granted under this section shall be deemed to be part of the time of his stay in the special school or children's home:

Provided that when a child has failed to return to the special school or children's home on the licence being revoked or forfeited, the time which elapses after his failure so to return shall be excluded in computing the time during which he has to be kept in custody.

**41. Provision in respect of escaped children.**—Notwithstanding anything to the contrary contained in any law for the time being in force, any police officer may take charge without warrant of a child who has escaped from a special school or a children's home or from the care of a person under whom he was placed under this Act and shall send the child back to the special school or the children's home or that person, as the case may be; and no proceeding shall be instituted in respect of the child by reason of such escape but the special school, children's home or the person may, after giving the information to the competent court which passed the orders in respect of the child, take such steps against the child as may be deemed necessary.

**42. Contribution by parents.**—(1) The competent court which makes an order for sending a neglected child or a juvenile delinquent to a children's home or a special school or placing the child under the care of a fit person may make an order on the parent or other person liable to maintain the child to contribute to his maintenance, if able to do so, in the prescribed manner.

(2) The competent court before making any order under subsection (1) shall inquire into the circumstances of the parent or other person liable to maintain the child and shall record evidence, if any, in the presence of the parent or such other person as the case may be.

(3) The person liable to maintain a child shall, for the purposes of sub-section (1), include, in the case of illegitimacy, his putative father:

Provided that where the child is illegitimate and an order for his maintenance has been made under section 488 of the Code of Criminal Procedure, 1898 (Act V of 1898), the competent court shall not ordinarily make an order for contribution against the putative father, but may order the whole or any part of the sums accruing due under the said order for maintenance to be paid to such person as may be named by the competent court and such sum shall be paid by him towards the maintenance of the child.

(4) Any order made under this section may be enforced in the same manner as an order under section 488 of the Code of Criminal Procedure, 1898.

**43. Control of custodian over child.**—Any person in whose custody a child is placed in pursuance of this Act shall, while the order is in force, have the like control over the child as if he were his parent, and shall be responsible for his maintenance, and the child shall continue in his custody for the period stated by the competent court, notwithstanding that he is claimed by his parent or any other person.

**44. Juvenile delinquent undergoing sentence at the commencement of the Act.**—In any area in which this Act is brought into force, the State Government may direct that a juvenile delinquent who is undergoing any sentence of imprisonment shall, in lieu of undergoing such sentence, be sent to a special school for the remainder of the period of the sentence; and the provisions of this Act shall apply to the child as if he had been ordered by a competent court to be sent to such special school.

**45. Removal of disqualification attaching to conviction.**—Notwithstanding anything contained in any other law, the conviction of a child or the fact that a child has been found under this Act to have committed an offence shall not be regarded as a disqualification, if any, attaching to a conviction of an offence under such law.

**46. Appointment of officers.**—(1) The State Government may appoint probation officers, officers for the inspection of special schools, children's homes, observation homes or after-care organisations and such other officers as it may deem necessary for carrying out the purposes of this Act.

(2) Subject to any rules that may be made under this Act, it shall be the duty of the probation officer--

(a) to visit neglected children and juvenile delinquents at such intervals as the probation officer may think fit;

(b) to report to the competent court as to the behaviour of any neglected child or juvenile delinquent;

(c) to advise and assist neglected children or juvenile delinquents and if necessary, endeavour to find them suitable employment;

(d) where a neglected child or a juvenile delinquent is placed under the care of any person on certain conditions, to see whether such conditions are being complied with; and

(e) to perform such other duties as may be prescribed.

(3) Any officer empowered in this behalf by the State Government may enter any special school, children's home, observation home or after-care organisation and make a complete inspection thereof in all its departments and of all papers, registers and accounts relating thereto and shall submit the report of such inspection to the State Government.

**47. Officers appointed under the Act to be public servants.**—Every probation officer or any other officer appointed in pursuance of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

**48. Procedure in respect of bonds.**—The provisions of Chapter XLII of the Code of Criminal Procedure, 1898 (Act V of 1898) shall, as far as may be, apply to bonds taken under this Act.

**49. Delegation of powers.**—The State Government may, by general or special order, direct that any power exercisable by it by or under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by an officer subordinate to the State Government.

**50. Protection of action taken in good faith.**—No suit or other legal proceeding shall lie against the State Government or any probation officer or any other officer appointed under this Act in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

**51. Act VII of 1897 and certain provisions of Act V of 1898 not to apply.**—The Reformatory Schools Act, 1897 (VII of 1897) and section 29B and section 399 of the Code of Criminal Procedure, 1898 (Act V of 1898) shall cease to apply to any area in which this Act has been brought into force.

**52. Power to make rules.**—(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the places at which, the days on which and the manner in which a children's court may hold its sittings;

(b) the procedure to be followed by a children's court or any other competent court in holding inquiries under this Act; and the mode of dealing with children suffering from dangerous diseases or mental complaints;

(c) the circumstances in which, and the conditions subject to which, an institution may be certified as a special school or a children's home or recognised as an observation home;

(d) the internal management of special schools, children's homes and observation homes;

(e) the functions and liabilities of special schools, children's homes and observation homes;

(f) the inspection of special schools, children's homes, observation homes and after-care organisations;

(g) the establishment, management and functions of after-care organisations; the circumstances in which, and the conditions subject to which, an institution may be recognised as an after-care organisation;

(h) the qualifications and duties of probation officers;

(i) the recruitment and training of persons appointed to carry out the purposes of this Act and the terms and conditions of their service;

(j) the manner in which a child may be sent outside the jurisdiction of a competent court;

(k) the manner in which contribution for the maintenance of a child may be ordered to be paid by a parent or guardian;

(l) the conditions under which a child may be placed out on licence and the form and conditions of such licence;

(m) the conditions subject to which children may be placed under the care of any parent, guardian or other fit person under this Act and the obligations of such persons towards the children so placed;

(n) any other matter which has to be, or may be, prescribed.

S. N. MUKERJEE,

*Secretary.*